

9 MARCH 1948

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1 Tuesday, 9 March 1948

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4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 Appearances:

12 For the Tribunal, all Members sitting.

13 For the Prosecution Section, same as before.

14 For the Defense Section, same as before.

15 - - -

16 (English to Japanese and Japanese
17 to English interpretation was made by the
18 Language Section, IMTFE.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except HIRANUMA, HIROTA, SHIRATORI and UMEZU, who are
5 represented by counsel. The Sugamo Prison surgeon
6 certifies that they are ill and unable to attend the
7 trial today. The certificates will be recorded and
8 filed.

9 Mr. Lazarus.

10 MR. LAZARUS: Mr. President, the corrections
11 suggested last night have been made. The translators
12 have those corrections, and Dr. KANZAKI is prepared to
13 read the corrected manuscript.

14 THE PRESIDENT: Dr. KANZAKI.

15 DR. KANZAKI: (Reading) Mr. President and
16 Members of the Tribunal, I wish to show on behalf of
17 the defendants that they are not guilty of the alleged
18 offenses concerning the China Affair.

19 The China Affair started from an incident which
20 took place at 11:40 p.m. July 7, 1937, in which a unit
21 of the Japanese forces, then maneuvering in the vicinity
22 of the Lukowchiao, at a spot commonly called Marco Polo
23 bridge, was illegally fired upon by Chinese troops
24 stationed at Lungwangmiao. (A. T. 20,532, 20,619.)
25 (A. T. 20,532, 20,619.)

The stationing of Japanese troops in North
1 China was executed according to Article IX of the joint
2 note concerning the North China Incident in 1901 (the
3 Boxer Rebellion) and Article IX of Protocol concerning
4 the Boxer Rebellion. (B. Ex. 247, T. 3314.)

5 Japan's right to perform such maneuvers had
6 been recognized in the notes exchanged between Japan
7 and China concerning the retrocession of Tientsin in
8 1902. The above notes run as follows:
9

10 Foreign troops shall possess the rights to
11 perform maneuvers of target practice. There shall be
12 no need of notice to the Chinese authorities, except
13 when ball cartridges or loaded shells are used.
14 (A. Ex. 2483, T. 20,596.)

15 On the night of the event a unit of Japanese
16 forces was performing a preparatory exercise for a
17 coming inspection, and, as a matter of course, the
18 Japanese troops used blank shots at the time, carrying
19 no ball cartridges. Accordingly, the performance of
20 such exercises was in no way a violation of the agree-
21 ment whatsoever.
22

23 As clearly testified in the evidence the
24 Japanese forces were in the following conditions:

- 25 1. The main force of the Japanese Garrison
(B. Ex. 247, T. 3314.
A. Ex. 2483, T. 20,596.)

1 Army at Peiping was staying at Tungchow preparing for
2 the inspection.

3 2. The Second Infantry Regiment stationed at
4 Tientsin was staying at Shanhaikwan for the same purpose.

5 3. Lt. General TASHIRO, the North China
6 Garrison Army commander, was so seriously ill that he
7 was unable to take command of his forces. (He died a
8 short time later.)

9 4. Brigade Commander Major General KAVABE,
10 Shozo, was staying at Shanhaikwan to inspect the Second
11 Regiment, leaving Peiping, his regular post.

12 5. At Tientsin, the base of the Japanese
13 Garrison Army, the supplying of arms and munitions was
14 impossible.

15 Such being the case, the Japanese forces were
16 by no means in condition favorable for provoking an
17 incident, whereas the Chinese Army had already taken
18 up positions along the bank of the Yungcheng River,
19 marching its forces of considerable strength up to
20 that line. Considering these facts there was no reason
21 to believe that the Japanese troops should have ini-
22 tiated an attack upon the Chinese forces. It is
23 undoubtedly evident that the sudden and illegal attack
24 of firing by the Chinese troops was really surprising
25

1 to the Japanese. (A. Ex. 2487, T. 20,619-20,620;
 2 Ex. 2479, T. 20,527.) Besides it is also quite clear
 3 from the evidence that Japan had never adopted any
 4 plan for waging war upon China. (B. Ex. 2479, T. 20,527;
 5 Ex. 2487, T. 20,615; Ex. 2488, T. 20,870.) Then, why
 6 did the Chinese Army take such a defiant action? The
 7 reason will be self-evident, if one looks into the
 8 development of the anti-Japanese campaign and the
 9 communistic movement in China.

10 At first the Chinese Government made efforts
 11 to suppress them, but of late their way of boycotting
 12 Japanese goods had become more and more organic and
 13 they were conducted on a larger scale, transformed into
 14 a general popular movement; consequently the Chinese
 15 Government found it impossible to exercise complete
 16 control over the movements, and at last the government
 17 itself began to assume the leadership of the movement.
 18 (A. Ex. 63, T. 20,985; Ex. 2510, T. 21,023, 21,024;
 19 Ex. 2511, T. 21,040; Ex. 2512, T. 21,043.) It was
 20 the development of the communist movements in China
 21 that spurred and boosted this anti-Japanese campaign,
 22 causing such a radical transformation of the movement
 23 (A. Ex. 2487, T. 20,619-20,620; Ex. 2479, T. 20,527.
 24 B. Ex. 2479, T. 20,527; Ex. 2487, T. 615; Ex. 2488,
 25 T. 20,870.
 A. Ex. 63, T. 20,985; Ex. 2510, T. 21,023, 21,024;
 Ex. 2511, T. 21,040; Ex. 2512, T. 21,043.)

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 A. Ex. 63, T. 20,985; Ex. 2510, T. 21,023, 21,024;
 Ex. 2511, T. 21,040; Ex. 2512, T. 21,043.)

that it became a serious menace to Japan.

1 In September 1920 a meeting was held at Shanghai
2 in preparation for the establishment of the Chinese
3 Communist Party under the leadership of Voichinsky,
4 the director of the Comintern for the Far East, and
5 later in May 1921 the party was formally organized.
6 The period between 1924 and 1927 was the age of the
7 joint campaign of the Kuomintang and the Chinese Com-
8 munist Party, which was started from Sun Ihsien's pro-
9 communist policy. (B. Lytton Report, Chapter I.)

10 But later the communists became estranged from
11 the Kuomintang and continued to carry on their original
12 movement standing in opposition to the Kuomintang.
13 (A. Ex. 57, Lytton Report, Chap. I, Outline of Recent
14 Developments in China.)

15 In December of the following year, 1936, there
16 happened the Sian Incident, and the Communists forced
17 Mr. Chiang Kai-shek to determine to make thorough pre-
18 parations for the offensive against Japan.
19 (A. Ex. 2,514, T. 21,104-21,106; Ex. 2,374, T. 18,426-
20 18,427.)

21 Moreover, Chinese Communist campaigns were not
22
23 B. Lytton Report, Chapter I.
24 A. Ex. 57, Lytton Report, Chapter I.
25 A. Ex. 2,514, T. 21,104-21,106; Ex. 2,374, T. 18,426-
18,427.

1 only a mere ideological agitation, but also movements
2 of military, political and diplomatic significance.
3 According to their plan, they attempted at first to
4 consolidate their sphere of influence in North China,
5 then advance forward into other districts to divide
6 China in two -- the Red autocratic North China and
7 the democratic South China -- and finally Sovietize
8 the whole land, completing the destruction of democratic
9 China. (A. Lytton Report, Chap. I.) And this brought
10 about serious consequences in the existence of Japan.
11 The characteristics of Chinese communist movements were
12 remarkably different from those of other countries.
13 The Chinese Communist Party attempted to put farmers
14 under arms according to the directive of the Comintern
15 in 1927. This armed Sovietizing move aimed at the
16 development of the movement through guerilla wars.
17 The process will be described below. At first the
18 "agents" smuggled themselves into peaceful districts,
19 and furnished outlaws in towns and villages as well as
20 bandits and mounted brigands with arms. Then entering
21 towns and villages under disguise, they set houses on
22 fire, looting and destroying the whole area. They
23 massacred masses of people, bringing forth a world of
24 A. Lytton Report, Chap. I.
25

1 darkness and terrors. And on the other hand, they con-
 2 ducted ingenious propaganda of communism, forcibly
 3 creating organizations of people, furnished with arms.
 4 The communists aimed at the armament of the whole people.
 5 At peace time, those people were engaged in farming and
 6 in emergency they took arms to fight. When punitive
 7 forces arrived, they concealed all their arms, trans-
 8 forming themselves into good citizens. So punitive
 9 forces were often at a loss to distinguish good citizens
 10 from those bandits. (A. Ex. 2479-A, T. 21,703; Ex. 57,
 11 Lytton Report, Chap. I.) When red troops were to eve-
 12 cuate from their occupied area, they adopted their
 13 favorite tactics commonly called "Kung chih-ching yeh,"
 14 (Tn: "Clear the Room, Sweep the Field") causing all men
 15 and all things in the area to disappear from sight.
 16 This brought about horrors indescribably terrible and
 17 severe. Their politics of fraud, intrigues and horrors
 18 threatened us beyond measure.

20 The Chinese Government fully cognizant of the
 21 dangerous nature of communistic movements had endeavored
 22 to stamp them out. (A. Lytton Report, Chap. I.)
 23 General Chiang Kai-shek had made his best effort for
 24 exterminating the Red forces. But in December, 1936,
 25 A. Ex. 2479-A, T. 21,703; Ex. 57, Lytton Report,
 Chap. I.
 A. Lytton Report, Chap. I.

1 he was led into a trap of the intrigue of the Communist
2 Army. He was arrested at Sian and compelled to agree
3 to form an anti-Japanese front by the joint campaign
4 of the Kuomintang and the Communist Party.
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After the Sian Incident their anti-Japanese movement changed its character in three points:

Firstly, anti-Japanism became an instrument of national policy. As stated above, anti-alienism had long been rooted in the minds of the people and anti-Japanese movements had been continued persistently. Before the incident, however, they took the shape of a popular movement, while the Chinese Government had been in a position to control them. But after adopting anti-Japanism as a national policy in the wake of the formation of anti-Japanese front by the joint campaign of the Kuomingtung and the Communist Party, the government actually and formally took the leadership of anti-Japanese popular movements, placing itself in the fore-front of the campaign.

(A. Ex. 57, Lytton Report, Chap. VII, T. 20904, 20907). Prior to this, although not a few troubles were raised between Japan and China, these two countries still maintained their friendship. But since China adopted anti-Japanism as its national policy, their friendly relations were broken by China.

Secondly, armed forces were used in the movement. Needless to say, it was utterly unreasonable that such movements should be attended by riots. A. Ex. 57, Lytton Report, Chap. VII; Tr. 20904, 20907.

1 But the Communist Party and the Kuomintang began to
2 make preparations for a war against Japan, adopting a
3 policy of excluding Japan by armed force and on the other
4 hand they launched vigorous and extensive anti-Japanese
5 propaganda. This meant nothing but a challenge to
6 Japan without a declaration of war -- a special situa-
7 tion which could not be explained by general rules of
8 international law.

9 Thirdly, further progress was made in communist
10 movements.

11 As the result of the Sian Incident General
12 Chiang Kai-shek compromised with the Chinese Communist
13 Party, his old enemy. But he agreed with Communist
14 Party on the condition that communistic movement should
15 be put to an end, so that China might not be sacrificed
16 in the interests of communism.

17 However, as declared openly by the Chinese
18 Communist Party, that joint campaign was a temporary
19 expedient aiming at the formation of the joint anti-
20 Japanese front. And, the fact is, the Communist Party
21 intended to establish a free sphere for its movement
22 under the cloak of joint front. That is to say, neither
23 the Chinese Communist Party nor the Chinese Red Army
24 actually desisted from conducting their communist move-
25 ments in accordance with the above condition, but on

the contrary the formation of the joint campaign
1 gave further chances for development of the movement.
2

3 Before that time the communists were circumscribed by the pressure of the government in their
4 movement. But after the agreement with the government,
5 being relieved of such obstacles, they could secure
6 the wider sphere for their activity. (A. Ex. 2547, T.
7 21556 - 21557).
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9 They were given many more chances for infusing
10 their thoughts deep into the hearts of the people
11 through anti-Japanese propaganda seasoned with communism.
12 (B. Ex. 2547, T. 21549).
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25 A. Ex. 2547, T. 21556 - 21557.
B. Ex. 2547, T. 21549.

1 The area which the Chinese Communist Party
2 had attempted to make subservient to their purpose
3 was the western basins of the Yellow River and the
4 Hwai River which extended from Sian up to the northern
5 part of Chiangsoo Province, forming the so-called
6 "Penetration Road" of the branch organizations of
7 the Soviet Communist Party. And before that time the
8 Chinese Communist Party had been pressed upon by the
9 Kuomintang Army. But now the whole area which the
10 communist had already encroached upon came into their
11 sphere of influence with the connivance of the
12 Kuomintang Government, and they found opportunity
13 to make a gradual advance into other districts. And
14 this attempt was realized. The Fourth Army of the
15 communistic group, which had been showing activity in
16 the narrow zone on the border of Chiangsoo-Hsichiang
17 Provinces, succeeded in widening their sphere both
18 northward and southward, which extended from North
19 China in the North to the southern basin of the
20 Yangtse River in the South.

21
22 And especially the Eighth Red Army made a
23 remarkable advance in North China.

24 The Chinese Communist Party had its "cells"
25 all over North China, and it was successful in infus-
 ing their thoughts especially in the minds of students.

1 The principal aim of the Kuomintang Commu-
2 nist joint campaign lay in anti-Japanism.

3 The development of these movements actually
4 ran counter to the security of Japan. And the Chinese
5 Communist Army extended its influence as mentioned
6 above, leading the van of the armed anti-Japanese
7 movement which declared war against Japan. Such a
8 remarkable growth of the Chinese Communist Army was
9 not merely a serious menace to Japan but also a
10 deplorable matter to China herself, because the
11 termination of the anti-Japanese war would mean
12 nothing but the end of the Kuomintang-Communist joint
13 campaign; consequently the extension and consolidation
14 of the influence of the Chinese Communist Army, in its
15 area as well as in its nature would jeopardize the
16 unity of China as a democratic state. This is clearly
17 seen in the actual state of the present conflicts
18 between the armies of the Kuomintang and the Communist
19 Party. Besides, attention must be paid to the rela-
20 tions between the Chinese Communist Party and the
21 Soviet Communist Party or former "Comintern": The
22 Chinese Communist Party was organized under the leader-
23 ship of the "Comintern," and its movements were con-
24 ducted under the same guidance. (A. Ex. 57, Lytton
25 Report, Chap. I.)

A. Ex. 57, Lytton Report, Chap. I.

1 Japan was aware of from long ago that the
2 activities in Manchuria made by the Communists were
3 intended to ruin Manchukuo and ultimately to crush
4 Korea and Japan. And it came true; the status of
5 Manchuria is what we expected it to be, isn't it?

6 As can be seen from the foregoing state-
7 ment, China adopted an armed anti-Japanese movement
8 as her national policy with the result that the
9 communist campaign gained so big a momentum that
10 the situation has become very serious for Japan.
11 This may be made quite clear by the fact that
12 from 1932 to around the outbreak of the China
13 Incident the Chinese Communists issued scores of
14 times, declarations, resolutions, circular telegrams,
15 etc., making desperate efforts to attain their object.
16 (A. Ex. 57, Lytton Report, Chap. III). Namely:
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1 1. On April 26, 1932, the temporary govern-
2 ment of Soviet China published an anti-Japanese war
3 declaration decree. It declared that she was making
4 every possible effort to block the peaceful negotia-
5 tions which Japan and the Nationalist Government of
6 China had been continuing in an effort to adjust the
7 Sino-Japanese diplomatic relations. It also declared
8 that it was putting into practice its assertion that
9 Japan be expelled from China by a revolutionary race
10 war which would be brought about by declaring war
11 against Japan.

12 2. On April 15, 1933 it published a proposed
13 cooperation pact between Nationalists and Communists.
14 It declared that it would do its best to hamper the
15 negotiations between the Nationalist Government and
16 the Japanese Government over the adjustment of their
17 diplomatic relations. It also urged the Nationalist
18 Government to stop attacking the Communist Army and
19 to organize an anti-Japanese volunteer army, and
20 further maintained cooperation between Nationalists
21 and Communists.

22 On July 15, 1934, furthermore, it published
23 a declaration. It proposed to confiscate all Japanese
24 enterprises and properties in China by dispatching the
25 Chinese Communist Army to the north as a vanguard to

1 execute anti-Japanese warfare. Not only that, but it
2 urged the Nationalist Government to sever at once
3 diplomatic relations with Japan and China; it sought
4 to mobilize the entire Chinese Army to carry out the
5 joint anti-Japanese war and to organize the anti-
6 Japanese volunteers and guerillas to make them partici-
7 pate directly in the anti-Japanese war and the guerilla
8 warfare.

9 3. On August 1, 1935, it published the
10 famous August 1 declaration and stated, "Chinese people
11 in the whole country should work in the cause of anti-
12 Japanese national salvation." It pressed upon the
13 high officials of the Nationalist Government to abandon
14 their slogans on Sino-Japanese friendship, cooperation,
15 etc., and urged them to form a united front against
16 Japan instead of attacking the Communist Army. It
17 sought to put into effect anti-Japanese national
18 salvation by forming a united race front and by
19 establishing defensive government. It also sought to
20 confiscate all Japanese properties in China and the
21 funds to be appropriated to anti-Japanese war, to
22 overthrow Japan with the help of the working classes,
23 Koreans and Formosans in Japan who might be friendly
24 to the Chinese.
25

4. On December 25, 1935, it published, "The

1 now existing political situation and the resolution
2 on the Communists' mission." This revealed the fact
3 the Chinese Communists were making strenuous efforts to
4 form the anti-Japanese united race front, and to organ-
5 ize a defensive government and anti-Japanese allied
6 forces. It cited a ten-point anti-Japanese action
7 program such as "confiscation of all Japanese proper-
8 ties in China to be appropriated to anti-Japanese
9 enterprises; and all other anti-Japanese elements in
10 Korea, Formosa and Japan, etc." It is clear that they
11 were seriously endangering the lives and properties
12 of the Japanese.

13 And in this resolution, it was openly stated
14 that the Chinese Communists were endeavoring to en-
15 large and strengthen themselves through a process of
16 anti-Japanese war.

17 5. On March 10, 1936, it published the
18 anti-Japanese National Salvation Declaration. It
19 cited ten-point action programs and urged all classes
20 in China to form a defensive government and anti-
21 Japanese allied forces.

22 6. On June 13, 1936, it published, "The
23 resolution on the imminent political situation." This
24 revealed the fact that the anti-Japanese national
25 salvation campaign was spreading in the whole country

1 of China, especially in North China; that a big mass
2 campaign was in contemplation; in addition, the fact
3 that the lower officers of the 29th Army under the
4 command of Sung Che-yuan were so filled with anti-
5 Japanese spirit that they had made an outrageous
6 anti-Japanese declaration against their superiors'
7 orders; that a big anti-Japanese armed campaign might
8 break out in North China; that an over-all anti-
9 Japanese campaign was developing with the Communist
10 Army as its nucleus, and that the communists had the
11 intention to hasten, support and expand the war against
12 the pro-Japanese Chinese as well as against Japan by
13 taking action.

14 Therefore, Sung Che-yuan's advance in North
15 China evidently meant an advance of the communist
16 elements.

17 Though Sung himself favored pro-Japanese, the
18 29th Army under his command contained many communists
19 who persisted in continuing both anti-Japanese and
20 pro-communist campaigns. Not only these soldiers
21 but also the general public in North China were filled
22 by now with anti-Japanese spirits because of the
23 propaganda and instigation on the part of the Chinese
24 Communists. This was an obvious fact.

25 7. And on July 8, 1937, that is soon after

1 the Marco Polo Bridge Incident, the Chinese Communists
2 issued a circular telegram, in which they categorically
3 opposed peaceful negotiations between Japan and China
4 and demanded war against Japan.

5 The foregoing development of affairs will
6 show clearly that not only the Sian Incident, in which
7 Chiang Kai-shek was kidnapped, was a plot mapped out
8 by the communists elements but also the Marco Polo
9 Bridge Incident was a prearranged plot by which they
10 intended to pave the way for the Nationalist Govern-
11 ment to participate in the anti-Japanese war by making
12 the Chinese Army take the initiative in firing.

13 From the beginning, the activities on the
14 part of the Chinese Communists were not mere ideo-
15 logical ones, but they were the concrete strategy that
16 directed the anti-Japanese combat in China; they were
17 the most important factors that formed the basis of
18 Sino-Japanese dispute.
19

20 As can be seen in the foregoing statement,
21 China adopted an armed anti-Japanese movement as her
22 national policy, and as a result the Communist cam-
23 paign gained so big a momentum that the situation had
24 become very serious for Japan. At this juncture the
25 Marco Polo Bridge Incident broke out. Japan, however,
put up with all sorts of insults, sticking to her

1 policy of peaceful solution of affairs by making
2 strenuous effort to avoid an over-all collision with
3 China. No sooner had the General Staff of Japan re-
4 ceived a report of the incident on July 8, 1937, than
5 it decided a policy to localize the incident and to
6 solve it as quickly as possible in the actual place.

7 For a considerably long period, Japan adhered
8 to this principle as her basic policy toward the
9 Incident. (A. Ex. 2487, HASHIMOTO's affidavit, T.
10 20611 - 20635; Ex. 2488, T. 20691).

11 At 6:42 p. m. that night, Chief of the General
12 Staff sent a telegram to the Commander of the Japanese
13 Garrison in China, ordering not resort to arms but
14 to seek to localize the affair. (B. Ex. 2487,
15 HASHIMOTO's affidavit, T. 20611; Ex. 2488-S, TANAKA's
16 affidavit, T. 20669; Ex. 2582, T. 21984). Then, on
17 July 9, Vice-Chief of the General Staff INAI sent a
18 telegram to the Chief of Staff of the Japanese Garrison
19 in North China, ordering him to solve the affair under
20 the following terms: (C. T. 21985).

21 (a) The Chinese troops responsible for the
22 affair shall be withdrawn to the left bank of the
23
24 A. Ex. 2487, HASHIMOTO's affidavit, T. 20611 - 20635;
Ex. 2488, T. 20691.
25 B. Ex. 2487, HASHIMOTO's affidavit, T. 20669; Ex. 2582,
T. 21984.
C. T. 21985.

Yungting River.

1 (b) The security of peace shall be maintained
2 hereafter.

3 (c) Persons directly responsible for the
4 affair shall be punished. In accordance with the
5 order of the General Staff, representatives of the
6 Japanese Army in North China met those of the Chinese
7 Army and a pact was concluded on July 11 on the basis
8 of the aforesaid terms, which showed that China was
9 responsible for the affair. (A. Ex. 2487, G.
10 HASHIMOTO's affidavit, T. 20611, Ex. 2488, S. TANAKA's
11 affidavit, T. 20699; Ex. 2481, WACHI, Tsunezo's
12 Affidavit, T. 20570.)

14 And on July 18, General Sung, Chief of the
15 29th Army and Chairman of the Hopei-Chahar Political
16 Affairs Commission, came to Tientsin and formally
17 recognized the pact. (B. Ex. 2487, G. HASHIMOTO's
18 affidavit, T. 20611).

19 On July 25, however, the Langfang Incident
20 broke out and electric wires were cut between Peiping
21 and Tientsin. The Japanese Army, with the consent of
22 the Chinese Army, advanced to the place 50 kilometres

23 A. Ex. 2487, G. HASHIMOTO's affidavit, T. 20611; Ex. 2488,
24 S. TANAKA's affidavit, T. 20699; Ex. 2481, EACHI,
25 Tsunezo's affidavit, T. 20570.
B. Ex. 2487, G. HASHIMOTO's affidavit, T. 20611.

southeast of Peiping and found the wires cut there.

1 After repairing operations were finished, the Japanese
2 repair unit was fired upon by the Chinese Army. (C.
3 Ex. 2487, G. HASHIMOTO's affidavit, T. 20611, T.21995).

4 Next, on July 26, the so-called Kwangaumen
5 Incident happened. The Japanese Army, with previous
6 notice and with the consent of the Chinese Army, dis-
7 patched troops to Peiping to protect the Japanese
8 residents there. No sooner had some of the Japanese
9 troops entered Kwangaumen than the Chinese Army closed
10 the castle gate and separated them from the main body,
11 then fired on both of them. (A. Ex. 2487, G. HASHI-
12 MOTO's affidavit, T. 20611; Ex. 2480, T. SAKURAI's
13 affidavit, T. 20552-20567).

14
15 At that time, many Chinese forces gathered in
16 North China and completely surrounded the Japanese Army
17 at Fengtai.

18 On July 27, the Japanese garrison, though it
19 had made every possible effort to solve the affairs
20 peacefully declared at last that there was no alterna-
21 tive but to resort to arms. (B. Ex. 2480, T. SAKURAI's
22 affidavit, T. 20552). On that same day in Tokyo, the
23 C. Ex. 2487, G. HASHIMOTO's affidavit, T.20611,T.21955.
24 A. Ex. 2487, G. HASHIMOTO's affidavit, T. 20552-20567.
25 B. Ex. 2480, T. SAKURAI's affidavit, T. 20552.

1 Chief Cabinet Secretary made the same statement.

2 Those two statements showed that Japan was
3 to fight against the anti-Japanese forces only and
4 not against the Chinese people.

5 They further pointed out that the Japanese
6 Army intended to restore peace and order quickly, to
7 respect the rights and interests of foreigners. They
8 also made clear that Japan had no territorial ambition
9 in North China. Till then, the actions of the Japanese
10 Army were limited within Peiping and its vicinity.

11 (A. Ex. 2480, T. SAKURAI's affidavit, T. 20552;
12 Ex. 2488, S. TANAKA's affidavit, T. 20669; Ex. 2487,
13 G. HASHIMOTO's affidavit, T. 20611.)
14

15 On July 29, however, the Tungchow Incident
16 broke out and 350 odd Japanese residents were massacred
17 by the Chinese Peace Corps. On the same day the
18 Japanese troops in Tangku and Tientsin were also
19 attacked. (B. Ex. 2498, K. KAYASHIMA's affidavit,
20 T. 20830 - 20835; Ex. 2499, S. KATSURA's affidavit,
21 T. 20840-20844; Ex. 2500-A, B. C., F. SAKURAI's
22 affidavit, T. 20848-20853).
23

24 The aforesaid many incidents unexpectedly

25 A. Ex. 2480, T. SAKURAI's affidavit, T. 20552; Ex. 2488,
S. TANAKA's affidavit, T. 20699; Ex. 2487, G. HASHI-
MOTO's affidavit, T. 20611;
B. Ex. 2498, K. KAYASHIMA's affidavit, T. 20830-20835;
Ex. 2499, S. KATSURA's affidavit, T. 20840-20,844;
Ex. 2500-A,B,C, F.SAKURAI's affidavit, T. 20848-20,85

1 caused the trouble to expand to a wider area and all
2 Japanese in China were confronted with the same danger
3 as occurred in Tungchow.

4 Throughout July, Japan never changed her policy
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of trying to localize the incident. It was indeed
1 China that broke the July 11 pact again and again and
2 all military actions taken by the Japanese Army in
3 the aforesaid cases were genuinely of self-defensive
4 nature.
5

6 On July 10, China dispatched her air forces
7 and four army divisions north of Honan Province.

8 On July 12, troops of five provinces as
9 Shensi, Hona, Uupai, Anhwei and Kiangsu gathered along
10 the Lunghai Railroad and the Peiping-Hankow Railroad.
11 In succession Chinese troops marched to North China
12 in large numbers and in August the Nationalist army
13 completely surrounded the Japanese garrison in North
14 China. Now China was quite ready for the execution of
15 war against Japan. By the end of August, the Chinese
16 Army about 400,000 strong gathered in Hopei Province.

17 China, by taking such steps, expanded a
18 series of local incidents into an armed affair
19 comparable to large-scale war.
20

21 The outburst of the Sino-Japanese dispute
22 is completely attributable to the challenge on the
23 part of China. Notwithstanding Japan's efforts to
24 stick to her

25 A. Ex. 2481, T. WACHI's affidavit, T. 20,569
B. Ex. 2487, G. HASHIMOTO's affidavit.

1 non-expansion policy, China did everything in her
2 power to expand the affair. A

3 To cope with such a situation, Japan
4 reluctantly decided on August 31 to dispatch three
5 divisions to China. As was stated before, the
6 gathering of the Chinese forces in North China and
7 the attacks on Japanese troops are in violation of
8 the UMEZU-Ho Ying-chin agreement concluded in June,
9 1935.

10 SECTION III

11 Now, the Japanese forces could not help
12 making some preparations so as to effect a break
13 in the deadlock, when, on August 9 in the same year,
14 the Lieutenant OYAMA Murder Incident occurred at
15 Shanghai and the Chinese forces laid siege to the
16 Japanese Naval Brigade at
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19 A. Ex. 2479, M. KAWABE's affidavit, T. 20,519; Ex.
20 2489, T. KAWABE's affidavit, T. 20,552; Ex. 2481,
21 T. WASHI's affidavit, T. 20,569; Ex. 2482, Takaji
22 WACHI's affidavit, T. 20,576; Ex. 2487, G. HASHIMOTO's
23 affidavit, T. 20,611; Ex. 2488, S. TANAKA's affidavit,
24 T. 20,669; Ex. 2492, 2493, 2494, T. 20,793; Ex.
25 2495, 2496, T. 20,803, 20,805; Ex. 2497, T. 20,816.

Shanghai, Central China shortly after the outbreak of the Lukouchiao Incident.

It is very obvious that these incidents were provoked by China after she fell into the anti-Japanese tactics of the Chinese Communist Party, when viewed from the party's activities centering around Shanghai as well as the disposition of the Chinese Communist forces in those days.

The Chinese forces all-out offensive operations finally made the Japanese forces resort to defensive operations and, in consequence, the Japan-China Incident was forced to expand into Central China, although the Japanese Naval Brigade kept its military operations within the limits of merely protecting the Japanese residents. That is, China concentrated her forces in the areas. Neighboring Shanghai and their numerical strength was 50,000 on August 12, while that of the Japanese Naval Brigade, having the responsibility for protecting the Japanese residents over there, was only 4,000. Starting with the attacks of the Chinese forces on August 13, the Japanese and Chinese forces at last came into a clash with each other. Such being the state of affairs, the Japanese Government and the Army General Staff decided to dispatch two divisions to Shanghai in order to rescue the said brigade from such impending danger and also to

protect the Japanese residents over there. The out-
 1 numbered Japanese forces had been further reinforced
 2 when the Japanese Expeditionary Army arrived at Shanghai
 3 on August 31. The Japanese Government made the greatest
 4 efforts to avoid a collision, in accordance with its non-
 5 expansion policy, but on November 2, three divisions were
 6 landed at Hangchow as Japan could not help fighting in
 7 order to prevent the annihilation of the Japanese forces
 8 by the Chinese forces which had increased from 300,000
 9 to 400,000 strong. The Japanese Army's mission was to
 10 check China's large forces that were advancing on Shang-
 11 hai, aiming at annihilating at a stroke all the Japanese
 12 residents who were, together with the small number of
 13 the Japanese naval marines, being besieged by the
 14 Chinese forces. (A. Ex. 2488, TANAKA, Shinichi's,
 15 affidavit, T. 20,669; Ex. 2515, OKAMOTO, Suemasa's
 16 affidavit, T. 21,152, 21,154, 21,155, 21,166-21,172,
 17 21,173; Ex. 2517, T. 21,178-21,180, 21,182-21,189; Ex.
 18 2516, T. 21,189-21,200; Ex. 2518, TAKEDA, Isamu's
 19 affidavit, T. 21,246, 21,257; Ex. 2419, T. 21,262.)
 20 From the first, Japan carried out military operations
 21 within the limit of necessity for self-defense against
 22 the challenge made
 23
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(A. Ex. 2488, TANAKA Shinichi's affidavit, T. 20669; Ex.
 25 2515, OKAMOTO Suemasa's affidavit, T. 21152, 21154-5,
 21166-21173; Ex. 2517, T. 21178-21180, 21182, 21189; Ex.
 2516, T. 21189-21200; Ex. 2518, TAKEDA Isamu's affidavit,
 T. 21246-21257; Ex. 2419, T. 21262.)

1 by the Chinese forces. Japan's military operations,
2 which were carried out in self-defense of her forces
3 and not against international law or any treaties, were
4 not the type of military campaign that can be called
5 war under international law. However, having entered-
6 upon hostile actions, General Chiang Kai-shek positively
7 launched his military campaign, issuing the order of
8 General Mobilization on August 15, setting up the
9 General Headquarters, appointing himself Generalissimo
10 of the Army and Navy, and dividing China into four
11 zones of action. In other words what compelled Japan to
12 fight with China was China's own military operations.
13 On November 17, Japan at last found herself under the
14 necessity of setting up Imperial Headquarters. Her
15 military campaign was an inevitable action answering to
16 that of China. Japan's military operations were always
17 carried out later than China's positive operations.
18 Such a local event as stated above led up to the Japan
19 and China Incident. In spite of the fact that Japan
20 made all possible exertions to localize the Incident
21 consistent with her policy, military operations
22 spread out, more and more, dragged out by China's
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25 A. Ex. 248, T. 20,694-20,697.

1 efforts to expand it into a Japan-China war. (A. Ex.
2 2488, T. 20,694-20697.) Should one intensely study the
3 specific state of affairs between Japan and China, would
4 one understand why Japan had continually made such
5 efforts to the last to avoid obstacles to a peaceful
6 settlement.

7 The Chinese problems can scarcely be discussed
8 in the same way as the relations between the United States
9 and European countries and China since they are matters
10 of life and death for Japan. (B. Ex. 57, Lytton Report,
11 T. 20,899.) It goes without saying that the reasons
12 why the Chinese problems are life or death questions for
13 Japan is due to such specific geographical circumstances
14 that the territories of both countries are next to each
15 other.

16 The foregoing is proved by the fact that the
17 ISHII-Lansing Agreement of 1917 acknowledged Japan's
18 special position based on geographical adjacency.
19 (C. Ex. 2317, T. 17,389-17,391.)
20

21 Japan was tormented by an annual increase in
22 her population of between 800,000 to 900,000 notwith-
23 standing her territories being too small for such over-
24 population.

25 (A. Ex. 2488, T. 20694-20,697.
B. Ex. 57, Lytton Report, T. 20899.
C. Ex. 2317, T. 17389-17391.)

1 As a consequence, political, social and economic
 2 tribulations and anxieties grew apace. Whether her
 3 counter-measures were good or bad was a matter of life
 4 and death for her. There is comparatively little
 5 arable land in Japan proper and her agriculture has
 6 a meager supply potential for such over-population.

7 Accordingly, Japan could only resort to
 8 emigration and manufacturing industry development
 9 policies. All territories suitable, were, however,
 10 closed against the Japanese people; for example, there
 11 was even a certain country discriminating against
 12 Japanese residents who were emigrants to that country,
 13 despite the fact that the country is blessed with
 14 vast land and abundant commodities. The disposal of
 15 over-population by means of the emigration policy,
 16 therefore, became hopeless in recent years. The only
 17 other policy left for her, was the development of
 18 the manufacturing industry. As a consequence of
 19 scarcity of land and of commodities, Japan had to
 20 obtain from abroad absolutely necessary materials
 21 for development of manufacturing industries and had
 22 to seek outlets all over the world for her manufactured
 23 goods.
 24

25 A. Ex. 57, Lytton Report, Chap. VII
 B. " " " " " " T. 20,893-4.

1 However, most of the producing countries in the world
2 gradually restricted the supply of materials when Japan
3 developed her industrial production and when the rush of
4 her products became extensive oversea. Just prior to
5 the outbreak of the Japan-China Incident, among the
6 countries involved, with her, there were many countries
7 that enforced the restriction of prohibition of exports
8 and imports or adopted the tariff system - the refusal
9 to deal with a trading country and other blunt restrictions
10 on exports.

11 Thus Japan's industry was hard pressed. Further-
12 more, in foreign markets high tariffs and other fetters,
13 which were abundant after World War I, impeded progress
14 and kept out Japan's products.

15 Thus, Japanese Government authorities were very
16 much worried as the next turn.

17 As a result the Japanese Government gave
18 up the industry development policy dealing with all the
19 world and could not help maintaining the survival of the
20 state by means of concentrating all efforts in China.

21 From the first, Japan had no territorial am-
22 bition in China. Through the economic cooperation of
23 Japan and China, Japan obtained the commodities that she
24 wanted while China got the manufactured products from
25 Japan.

1 Japan intended to establish peace in East Asia,
2 going hand in hand with China for the purpose of making
3 a contribution to the peace of the world. (A. Ex. 57,
4 T. 20,894-20,900.) Japan pocketed all sorts of insults
5 and violence, arising from China's anti-Japanese
6 agitation, which were committed by China several scores
7 of times. In fact, she expected to bring about co-
8 operation between the two countries.

9 Now, the relations between Japan and China are
10 very old, deep, and thick. It is beyond imagination
11 how the Chinese culture formerly influenced Japanese
12 culture, economy, politics, religions, etc., for so many
13 centuries. Since the MEIJI Restoration, Japan had
14 adopted European and American culture and such culture
15 in Japan had surpassed Chinese culture. Accordingly,
16 many Japanese advisors, technicians, professors and
17 teachers were employed by China and tens of thousands
18 of Chinese students studied in Japan. This fact clearly
19 shows the close relations between the two countries.
20

21 Japan depended upon China as much as China de-
22 pended upon Japan. From the historical, geographical,
23 and economic points of view, the two countries had to
24 be on good terms with each other. Accordingly, Japan
25

(A. Ex. 57, T. 20895-20900.)

1 firmly believed that economic cooperation of the two
2 countries was of an absolute necessity in point of
3 their co-prosperity.

4 Japan intended to remove all unequal relations
5 between the countries, as they were in the way of reali-
6 zing such an idea. Japan's unequal privileges acquired
7 from China originated in the Treaty of Commerce and
8 Navigation concluded with China in the year 1895; that is,
9 she was a little more than a half a century behind
10 Britain and other powers. In accordance with the afore-
11 mentioned intentions, the principle of abolishing extra-
12 territoriality was arranged in the provisions of the
13 Japan and China Supplementary Treaty of Commerce and
14 Navigation concluded in 1901; Japan gladly participated in
15 the conclusion and adoption of treaties and agreements
16 at the Washington Conference of 1922; at the International
17 Conference which was held at Peking in 1925, with
18 reference to the revision of the Chinese tariffs; she
19 played the leading role at the conference, submitting
20 the most liberal proposal relating to the recovery of
21 China's customs, autonomy, regardless of great losses
22 sustained by her with respect to foreign trade. Although
23 she later intended to effect the abolition of the unequal
24 treaties, always having the deepest sympathy with the
25

1 national aspiration of China, the realization of this
2 was unfortunately delayed by reason of complications
3 of the other Powers' interests. In 1940, the abolition
4 of extraterritoriality and the return of exclusive con-
5 cessions were effected, and the fundamental principles
6 of economic cooperations were agreed upon by both the
7 Japanese Government and the Nanking Regime, by means
8 of several agreements.

9 In those days, taking a step forward, Japan
10 was ready to conclude a treaty contributing to the wel-
11 fare of China. It is, indeed, explicit that further
12 effectual results could have been gained had the Chiang
13 Kai-shek regime shaken hands with Japan.

14 The armed clash of Japan and China, following
15 the Manchurian Incident came to an end by virtue of the
16 Tangku Truce Agreement concluded in May 1933. Having
17 returned to the normal policy of Sino-Japanese cooperation,
18 the Nanking Government carried out the Japanese-Chinese
19 Pourparler in 1934 and the agreement regarding the
20 principles of equality, mutual protection against
21 communism and economic cooperation between the two
22 countries was effected. Consequently, General Chiang
23 Kai-shek issued the Japan-China Good Will Statement
24 and subsequently proclaimed the Order Prohibiting Boycott
25 Against Japanese Goods. Moreover, the pending question

concerning the exchange of ambassadors was solved.^A

In North China, the anti-Manchuria and Anti-Japan agitation, that had taken place in connection with the Manchurian Incident and which had caused various disputes was settled locally, also, the question with reference to the demilitarized zone, based on the armistice agreement, was solved locally by the so-called UMEZU and Ho-Iuchin Agreement, although there were infringing acts committed by China. Still further, the question as to the invasion of the Sung-Cheyuan Army into Jehol was also settled locally by the DOHIHARA-Chintechun Agreement.

Despite breaches by China in the execution of the aforesaid agreements, Japan waited patiently and saw a ray of hope for restoring diplomatic relations of the two countries to the path of right.^B

With the Sian Incident, however, China's policy

A. Ex. 2506, T. 20,965, 20,966.

B. Ex. 2489, KAWABE, Torashiro's affidavit, T. 20,746-20,761; Ex. 2490, SHIBAYAMA, Keneshiro's affidavit, T. 20,775-20,777; Ex. 2491, ISHIKAWA, Jun's affidavit, T. 20,782-20,790; Ex. 2507, 20,967-20,978; Ex. 2508, T. 20,979-20,982.

1 toward Japan was reversed and the two countries became
2 involved in the most grave situation as stated above.
3 But, Japan thought China's state policy such as armed
4 anti-Japanese agitation and joint action by Chinese
5 national and communist parties, was not the real inten-
6 tion of General Chiang Kai-shek; she was continually
7 patient and prudent on the one hand while on the other,
8 she made every effort to the end so that the incident
9 might be peacefully settled.

10 What Japan most disliked was troubles with
11 China, because she believed her sole way to survival was
12 closer and closer, economic cooperation between the two
13 countries. Why could not Japan help fighting though
14 she hated, any sort of dispute with China? As stated
15 above, Japan could not but help fight when forced to by
16 a China which followed the tune played by the Communist
17 Party. To wit, Japan's military operations, always in
18 answer to the challenges made by China, were carried
19 out within the limits of necessity for removing injustices
20 or were such operations as took the initiative against
21 the big Chinese forces in order to maintain Japan's
22 own security. It was unavoidable for the
23
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1 Japanese forces to adopt positive operations so that
2 the enemy's intention to fight could be stopped, with
3 a view to settling the Incident as soon as possible.
4 (A. Ex. 2488, T. 20,694-20697.) In so far as inter-
5 national relations are concerned, it is the regular
6 procedure to settle disputes arising between two coun-
7 tries by means of diplomatic negotiations.
8

9 And, there have been too many instances to
10 enumerate where the Powers concerned have used military
11 operations instead of diplomatic negotiations when they
12 had disputes with China.

13 As these were due to the special conditions of
14 China, one cannot draw a hasty conclusion that they were
15 unlawful in the light of international law, the Lytton
16 Report (B. Ex. 57, p. 513) proves so.

17 We now go to page 44, Section IV.
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(A. Ex. 2488, T. 20694, 20697.
B. Ex. 57, p. 513.)

SECTION IV.

Thus, diplomatic negotiations often met with various difficulties and there were not a few cases in which they were forced to be left unsettled. From the standpoint of the other party to the negotiations, slight questions might be left to chance, but in the case of the vital ones, it was impossible to leave them unsettled for a long time. Moreover, not only could the power of the Central Government not reach the whole land but the spheres of influence of local governments were limited, while powerful generals with strong military forces perverted the intentions of the Government and caused diplomatic negotiations to assume extremely complicated aspects. As such had been, and this being the actual state of affairs in China at that time, those concerned in the negotiations could not help taking the trouble to persuade the generals who had real power on the one hand while holding negotiations with the Central

1 Government on the other.

2 Furthermore, the fierceness of the collective
3 violence of the people was so great that once its
4 attack was directed to diplomatic subjects, it was
5 often impossible to conduct by ordinary means of
6 diplomacy. The collective violence was caused under
7 the guidance of a few people who took advantage of
8 the power of the mass and the mob psychology of the
9 Chinese people to follow blindly. The mob consisted
10 of large numbers of people and taking no fixed course
11 of action resorted to brute force so that not only
12 the Chinese but foreigners also had their social life
13 disturbed by violence and threat with houses and
14 property destroyed, burned, devastated or plundered.
15 Even cases of bloodshed were not a few.

16 The countries which suffered most from this
17 popular movement were England and Japan. To cite
18 recent instances, one can mention the Anti-British
19 disturbance in Hongkong, Canton and other places in
20 1924, the May 30th Incident in 1925 and the riots in
21 1926 for the recovery of the British extraterritorial
22 settlements in Hankow and Kinkiang, all of which were
23 done for the infringement of the British rights and
24 interests and the lives and property of the English
25 were day and night

1 objects of violence. At Shamen in Canton, even war
2 broke out (A. Ex. 57, Lytton Report, Chapter VII).
3 The mass movements, which were frequently repeated
4 in the anti-Japanese boycott, developed from such
5 negative measures as boycotting Japanese goods and
6 forced withdrawal of Japanese employees to positive
7 attacks on the lives and property of the Japanese;
8 and their outrageous disorderliness on the occasion
9 was beyond description. The Chinese Government was
10 shiftless and doing nothing all the time and showed
11 no sincerity in suppressing the movements. On the
12 contrary, the Government itself stirred up and took
13 advantage of the mass anti-Japanese boycott movement
14 to force Japan into submission. The Government once
15 issued a proclamation forbidding the anti-Japanese
16 movement but it had no effect and remained a dead
17 letter. (B. Lytton Report, T. 20,904). The use of
18 violence by the masses regarding foreign affairs and
19 the lack of power and sincerity on the part of the
20 government to suppress the violence naturally forced
21 the other party to the negotiations on vital questions
22 of national existence to adopt a device to stamp out
23 the violence by using its own military force and to
24 make the foreign
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A. Ex. 57, Lytton Report, Chap. VII.

B. Lytton Report, T. 20,904

1 policy of the Chinese Government take a legitimate
2 course.

3 In diplomatic negotiations with China, it had
4 so far been traditional for foreign states mainly to
5 negotiate with the Central Government on the important
6 questions of the whole of China and of more than two
7 Chinese Provinces and to negotiate with the local Govern-
8 ment concerned on the questions of a local nature. The
9 complication of interests between the Central and local
10 Governments, however, often forced one to negotiate with
11 these two Governments at the same time. In such a case,
12 it was not uncommon for each of them to shirk responsi-
13 bility, the Central Government referring the matter to
14 the local government and vice versa and thus the matter
15 was indefinitely postponed with no prospects of settle-
16 ment for years. Such being the case, it was natural and
17 not unreasonable that a foreign state, that is, the other
18 party of the negotiations with China should conclude that
19 the matter was insoluble by means of ordinary measures.
20 The Chiang Kai-shek Regime had most strongly insisted
21 upon the wholesale withdrawal of the Japanese Army from
22 China. From the standpoint of Japan, it was not so
23 simple and easy for her to withdraw forces from China, as
24 the actual conditions of China being as mentioned above,
25 she did not accept our repeated offers of peace negotia-

tion. Thus, it should not hastily be concluded that
1 Japan had no sincere desire to make peace because she
2 did not agree to the proposed withdrawal of troops
3 from China.

4 Japan, who had stuck to the fundamental policy
5 of economic coalition with China, was forced to use
6 military force by the unexpected outbreak of the Lukouchiao
7 Incident for the purpose of self-preservation of her
8 army on the spot. China rushed reinforcements to crush
9 the Japanese Army at one blow and Japan also had to
10 dispatch her reinforcements with the result that the
11 incident spread wider and wider. Japan never intentionally
12 induced the incident for her economic purposes or out
13 of her territorial ambitions.

15 Though the Japanese Government had issued
16 various statements on the China Incident after it had
17 expanded to assume the aspect of nation-wide war, the
18 Lukouchiao Incident was by no means one that was caused
19 for the achievement of the intentions embodied in these
20 statements. The statements were issued for the settlement
21 of the trouble and not for causing it.

22 The tactics of diplomacy were often adopted to
23 take advantage of the weak point of the other party.
24 There were not a few instances in the international
25 relations with China in which foreign countries took

1 advantage of the Chinese weak points by using military
2 force. It is not an exaggeration to say the majority
3 of treaties concluded in the Nineteenth Century and
4 the first half of the Twentieth Century between China
5 and England, France and Russia, since the opening
6 of China to the world in 1842, were all achieved by
7 such tactics. Especially, the treaties for the settle-
8 ment of the Boxer Rebellion in 1900 were made by the
9 use of combined forces of many powers. Still in
10 recent years, England landed a big force of 20,000
11 in China and other powers landed their marines at
12 Shanghai, too, during the May 30th Incident in 1925;
13 British warships bombarded the town of Wansien in
14 1925; Soviet Russia attacked the Manchurian Army in
15 1929 on the borderland of China and Siberia in a
16 protest against the anti-Soviet policy of the Chang-
17 hsuehliang Regime; and warships of America, England
18 and France bombarded the walls of Nanking during the
19 Nanking Incident in 1926.

20 Furthermore, it was as their preparation
21 against possible emergency that the powers had their
22 garrisons for many years in the Peking-Tientsin Area,
23 stationed many of their warships carrying landing
24 corps at the important ports on the rivers and coast
25 of China, and often organized a sort of fighting unit
composed of their residents, who were trained and commanded
by their

1 military officers. ^A Although the system of the
2 North China Garrison was abolished in accordance with
3 the Resolution adopted in Washington Conference in
4 1922, the other systems of stationing garrisons survived.

5 The Japanese interests in China were such a
6 vital problem for Japan that her fate would be decided
7 and so even other states could not but admit that Japan
8 might well take some day strong measures for the
9 protection of them when forced to do so. Yet, Japan
10 tried with patience and prudence not to use military
11 force on her own initiative.

12 Generally, in the relations between states,
13 the use of military force by one state against another
14 leads to war and even when there is no use of military
15 force, coercion by force usually involves the danger of
16 bringing about war. In China, however, it was not
17 necessarily so due to the peculiar circumstances existing
18 there. Once, for instance, England gathered her force
19 at Hongkong during the Yunnan Incident in 1874 and
20 could thereby conclude the Cheefoo Treaty but no war
21 ensued. During the May 30th Incident in 1925, England
22 tried to settle
23
24

25 A. Ex. 2483, 2484, T. 20,594-20,598, 20,599-20,600.

1 the question of landing her forces, numbering 20,000
2 in China, but no war broke out between the two countries.
3 The bombardment of the walls of Nanking by the
4 warships of America, England and France during the
5 Nanking Incident in 1925 also brought about no war;
6 and the attack by the Soviet Army on the troops under
7 Chang-hsuehliang in 1929 did not lead to war either.
8 Thus, the diplomatic intercourse with China had a
9 singular and peculiar feature quite different from
10 the usual course of diplomacy. The use of force against
11 China was thus one of the measures often resorted to
12 by the Powers for the settlement of serious diplomatic
13 questions and it actually led to the use of military
14 force in some cases and in other cases it proved
15 nothing more than a threat. (A. Ex. 2485, T. 20,602-04).

16 Although Japan had no intention whatever
17 to bring about the China Incident in order to settle
18 the problem of the anti-Japanese movement, yet the
19 circumstances in China as above mentioned caused the
20 Incident to develop into warlike operations. Under such
21 circumstances, Japan merely tried, in these operations, to
22 protect her rights and interests guaranteed by the
23 treaties with China. She endeavored to suppress the
24 Chinese people's violence against Japan
25 A. Ex. 2485, T. 20,602-04.

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1 bringing her diplomatic relations with China into
2 normalcy and, moreover, to pave the way to bringing
3 about harmonious agreement between the Governments of
4 Japan and China for the economic coalition of the two
5 countries, which was the vital question for Japan.
6 Therefore, it was intended and announced, from the
7 very beginning, by the Japanese Government that Japan
8 would make the wholesale withdrawal of her army from
9 China whenever the proper opportunity arose for making
10 such agreement. (A. Ex. 460, KONOYE Declaration,
11 T. 5253).

12 The Chungking Government under General
13 Chiang Kai-shek once voiced the view that the with-
14 drawal of Japanese Army must be carried out as the
15 first requisite or else such diplomatic negotiations
16 as economic coalition and so forth should not be
17 contracted. Japan, however, could not accede to this
18 proposal as there existed peculiar situations in China
19 as mentioned above. Moreover military actions taken
20 by Japan were by no means against the spirit of the
21 treaties. In the Kellogg-Brand Treaty concluded in
22 1928, Japan had made the same reservation as England
23 and America to the effect that the Treaty shall not
24 be applicable in the case of the exercise of the right
25 of self-defense. And according to statement of the

1 United States Secretary of State at that time, the
2 necessity and extent of the self-defense should only
3 be decided by the country concerned alone. This was,
4 of course, wholeheartedly consented to by Japan.
5 Therefore, there could be no other state than Japan
6 which was in a position to decide the way and extent
7 of the use of military force in the China Incident.
8 It is unreasonable to regard the proposed economic
9 coalition of Japan and China as if intended by the
10 former as economic invasion because Japan resorted to
11 military force in the Shanghai Incident. If the term
12 "invasion" means the outward expansion of influence,
13 then Japan was not the only one country which engaged
14 in economic invasion. But, so long as it means the
15 invasion in its ordinary sense, it is most incorrect
16 to regard Japan as a country guilty of economic
17 invasion. Japan merely endeavored to save herself
18 from the pressure of over-population on the basis of
19 the reciprocal understandings with China and to main-
20 tain the lives of her people. It is incomprehensible
21 that the economic activities of the Japanese based on
22 treaty rights or the Sino-Japanese economic coalition
23 policy should be construed as an economic invasion only
24 because of the inevitable use of military force due to
25 the China Incident.

Furthermore, in the Sino-Japanese coalition which was aimed at by Japan, the principle of the Powers' equal opportunity in commerce and industry in China was not in the least ignored. Since the proposal by Secretary of State Hay in 1900, Japan entered into all treaties and agreements upholding this principle, often promised strict observance of it and never neglected to practice it even when it was not beneficial to her economic interests. Therefore, the Sino-Japanese economic coalition advocated by Japan never meant the Japanese acquisition of exclusive interests in all economic activities. There were, however, sometimes such situations as made the strict exercise of the principle of equal opportunity actually impracticable in the course of the China Incident. The reasons are:

a. The quantity of goods purchased by the Japanese Army to meet the absolute necessity of military actions amounted to such a quantity that there was actually little room left for the foreigners to purchase;

b. The business transactions in general were, for a while, seriously checked owing to the battles and other disturbances;

c. Owing to the temporary but serious

1 disorderliness in the areas of conflict, the
2 foreigners in general were forced to refrain from
3 business transactions;

4 d. Owing to the necessity for military
5 action, the communications of the foreigners were
6 temporarily restricted in some districts.

7 These were a temporary but inevitable abnor-
8 mality naturally accompanying the exercise of Japanese
9 military force in China. But they were of such a
10 nature as to bring about the recovery of the normal
11 conditions upon the amelioration of the situation.
12 So, it is too severe an impeachment to say that Japan
13 refused to give equal opportunity of commerce and
14 industry to the foreigners. If one remembers that
15 the wholesale withdrawal of troops from China was the
16 principle of Japan from the beginning, it is, needless
17 to say, unreasonable to put too much stress upon such
18 temporary arrangements as mentioned above.

19 In case of civil wars, foreign wars or other
20 incidents, the enjoyment of the treaty rights by the
21 foreigners was very often temporarily restricted or
22 suspended on unavoidable grounds. Even in such cases,
23 which ought to be construed as contrary to the treaty,
24 the countries concerned used to endure them. So there
25 can be no reason why it should be impossible to assume

1 a tolerant attitude in the case of Japan.

2 THE INTERPRETER: May we now go back to
3 page 42 of the English text? Although the following
4 part, that is, from the ninth line, page 42, to the
5 end of page 43, was omitted as given to the Language
6 Division, Dr. KANZAKI read the corresponding parts in
7 the Japanese copy, as we were ahead of Dr. KANZAKI
8 at the time. We will now read--

9 THE PRESIDENT: Why is this necessary? This
10 is disorderly and we are going to have no disorder.
11 There are statements of fact in this address not
12 supported by evidence.

13 MR. LAZARUS: If Dr. KANZAKI inadvertently
14 read it, I don't think it should be read in English,
15 Mr. President, because it is marked stricken in our
16 copies.

17 THE PRESIDENT: The accused who are now
18 listening in Japanese are hearing things that are not
19 before the Court actually.

20 What is to prevent you from reading this,
21 Mr. Lazarus? You are co-counsel; you have a perfect
22 right to share the reading of this.

23 MR. LAZARUS: I will, if that is the pleasure
24 of the Tribunal, but it has just been our policy that
25 the counsel who does the writing does the reading in

1 court; but I will continue the reading, Mr. President.

2 THE PRESIDENT: The Japanese must be made
3 to conform to the English as far as possible now.

4 MR. LAZARUS: I will begin reading at the
5 middle of page 57:

6 At the time of the China Incident, societies
7 for maintenance of public peace and self-governing
8 committees were organized everywhere, too, and asked
9 the Japanese Army for the protection of their lives
10 and property. As the Japanese Army had no hostile
11 will against the Chinese people, their requests were
12 favorably accepted. To the Japanese Army these
13 organizations were available for the maintenance of
14 the local public peace. Their assistance was helpful
15 in purchasing provisions and other military supplies
16 or in establishing barracks needed for stationing
17 troops. Thus, the desires on both sides were coinci-
18 dent and their relations could not help becoming closer
19 and closer.
20

21 With the progress of the China Incident, the
22 self-defensive organizations were regionally organized
23 and kept closer contact day in and day out with the
24 Japanese Army. These organizations gradually had con-
25 nections with each other in the elongated course of the
incident and were finally united into one government

outside of the sphere of General Chiang's influence.
1 It was natural that this Government had vital relations
2 with Japan.

3 The birth of the Renovation Government was
4 the product of such situations, but this Government
5 was short of able personnel and had no adequate
6 capacity to push forward. It was just at this time
7 when Mr. Wang Ching-wei escaped from Chungking and
8 formed the New Regime.

9
10 Mr. Wang, was, as is well known, a top-flight
11 statesman in China and then leader of Young China. It
12 is needless to say that a person competent to lead
13 Young China should be the one who was burning with
14 ardent patriotic spirit. His view that the long
15 drawn-out conflict between China and Japan would ruin
16 both China and Japan was not accepted by General
17 Chiang and his repeated and direct advice to the
18 General caused danger to his person. Facing such a
19 situation he decided himself, in obedience to the
20 dictates of his own conscience to close contact with
21 Japan and to try to rescue China by promoting friendly
22 relations founded upon equality between China and
23 Japan. It was natural that this attitude of Mr. Wang
24 won the sympathy and support of Japan, which concurrent-
25 ly assisted the establishment of Wang's Government.

1 Mr. Wang was the Vice-President of the
2 Republic of China and at the same time the Chief of
3 the Central Committee of Kuomintang. Once he fought
4 alongside with the late Dr. Sun Yat-sen for the
5 realization of the Kuomintang Revolution and used
6 his efforts for the establishment of the Republic
7 of China.--

8 THE PRESIDENT: Where is the evidence of
9 that? There may be evidence -- I cannot recollect it --
10 hidden away in some document in evidence. There may
11 be a statement of that kind but I do not recall it.

12 MR. LAZARUS: On the next page it has two
13 references, Mr. President.

14 It was rationally impossible that a person
15 of such a career and position as he had to become the
16 puppet of an alien state and he was not in fact a
17 puppet driven by Japan. But it was rather Japan that
18 was driven by his leadership. When the National
19 Government of the Republic of China was established
20 on March 30, 1940, he used the sun-in-blue-sky flag
21 with the inscription of anti-communism and peace,
22 proclaimed the Three Peoples' Principles of Sun Yat-sen
23 and adopted the policy of anti-communism and peace.
24 He moved the capital from Chungking to Nanking and
25 invited General Chiang to come and join his movement

1 and tried to carry out the peaceful unification of
2 China. And as the best way to promote peace between
3 China and Japan, Japan gave her recognition to his
4 new regime in accordance with the principle of inter-
5 national law and in fulfillment of the actual re-
6 quirements of the situation.

7 The treaties concluded between Japan and
8 this New Regime clearly show that the New Government
9 had never been treated as a puppet. (A. Ex. 464,
10 T. 5334-6).

11 Even if this new government had some Chinese
12 in its personnel who were pro-Japanese, that was
13 quite natural from the peaceful, cordial relations
14 between Japan and China, so it is rationally impossible
15 to conclude from that that the new Chinese Government
16 was a puppet of Japan.

17 Skip pages 61 and 62.

18 THE PRESIDENT: We will recess for fifteen
19 minutes.
20

21 (Whereupon, at 1045, a recess was
22 taken until 1100, after which the proceedings
23 were resumed as follows:)
24
25

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Lazarus.

4 MR. LAZARUS: Omit page 61 and page 62, and
5 the first line of page 63, if your Honors please.

6 (Reading continued with the second line on
7 page 63) It is true that Japan was compelled to use
8 force, as above mentioned, in order to defend herself
9 in the China Incident, but she had not the slightest
10 idea of invading China to wrest her territory. She
11 is convinced that, in order to stabilize East Asia
12 and realize the principle of live and let live, it
13 is essential to unify China as a modern state and form
14 a government so firm as to preserve its territorial
15 integrity and public peace.

16 Accordingly, Japan strongly opposed the
17 partition of China by European powers toward the
18 end of the 19th century, and later, when the
19 joint control of China was proposed by some great
20 powers, she resolutely expressed herself against it.
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1 As regards the conclusion of the Nine-
2 Power Treaty in 1922, Japan made her endeavors at
3 the Washington Conference and willingly signed and
4 ratified this treaty.

5 Whether the territorial integrity of China
6 can be preserved or not is a problem directly affect-
7 ing the destiny of Japan as well as that of China
8 herself.

9 This is the reason why Japan cannot but
10 prevent other countries from acquiring Chinese
11 territory. The Russo-Japanese and the German-Japan-
12 ese War broke out on that account, and it is for the
13 same purpose that Japan contributed to the establish-
14 ment of the principle of equal opportunity and sup-
15 ported China's independence.

16 If Japan had had an ambition to wrest
17 territory from China, there would have been many
18 more opportunities available in the past. However,
19 she would not take advantage of the murder of
20 a missionary or an explorer to acquire a colony
21 if she had taken the initiative in wresting territory
22 from China, it might have given rise to the partition
23 of the whole Chinese territory. It is natural, there-
24 fore, that Japan abstained from acquiring Chinese
25 territory, for she was well aware that such an action

would be literally suicidal.

1 Japan had not the slightest idea of exercis-
2 ing military and political control over China. It is
3 plain that, in order to put China under Japan's mili-
4 tary control, she must constantly station about ten
5 million troops in China, and especially send a force
6 several times as large in case of emergency. Judging
7 from the national resources of Japan, it is clear
8 that such a thing is absolutely impossible and also
9 extremely difficult in view of the circumstances
10 peculiar to China.
11

12 The Chinese military system was lacking in
13 uniformity and organized on the basis of each dis-
14 trict and province. The provincial army is difficult
15 to control and supervise, for most of the staff is
16 composed of those who were born in the province where
17 the army has been stationed. Moreover, we must pay
18 attention to the idea of private forces, which remains
19 in the military system. In former years, all the
20 Chinese armies were a few leaders' private possessions.
21 These leaders arbitrarily decided the organization
22 and payment of their armies, and carried on operations
23 only to preserve and improve their influence and inter-
24 ests. It is undeniable that the idea as well as the
25 facts of the old military system remain in the present

1 national army system which has developed from the
2 former.

3 In the present military system, there are
4 many forces attached to the local governments as well
5 as one attached to the central government. The former
6 have not so much outgrown the old private force.
7 Their leaders have full powers to organize, pay,
8 appoint and dismiss, so the forces move at their
9 will and even the central headquarters cannot really
10 appoint, dismiss or transfer an officer.

1 These provincial forces oppose each other
2 by the centrifugal idea of "provinces opposing each
3 other", which is traditional in China. There exist
4 the same relations between the central and local head-
5 quarters in every province. Thus the Chinese military
6 system is so complicated that it would be difficult even
7 for the greatest general or hero of all times to unify
8 China completely. Even if China yielded under strong
9 force for a time, she would all too soon be restored to
10 the former state. Japan is well aware of this fact.
11 The Chinese themselves could control China completely;
12 it was absolutely impossible for the Japanese to rule
13 China by force - for the Japanese who had been subject
14 to expulsion there. Nor has she had any ambition to
15 exercise political control over China. This will become
16 clear of itself, when one realizes the extremely com-
17 plicated policy of the country.

18 THE PRESIDENT: I do not recollect any evidence
19 to that effect. There may be. Who gave the evidence
20 about the present military set-up in China?

21 MR. LAZARUS: I don't remember.

22 THE PRESIDENT: We will only waste time dis-
23 cussing this summation. We will disregard every state-
24 ment of fact that is not supported by evidence.

25 MR. LAZARUS: I will continue reading at the

bottom of page 67, Mr. President:

1 China is not a completely unified country,
2 but one of an extreme decentralization. Except in a few
3 designated matters every province is allowed to govern
4 itself almost as freely as an independent country.
5 This has been written in history from olden times.
6 Even though she appears to be a unified, centralized
7 country, the central government can in practice exer-
8 cise its influence only over the sphere where it can
9 wield its military power, and outside the sphere, each
10 province is under sway of a local power that is enforc-
11 ing an extremely localized autonomous government there.
12 Such a system was not established in a day, so it will
13 take time to break it down. These actual circumstances
14 have resulted from the fact that all the provinces, as
15 distinguished from each other, have been continuously
16 at variance for the past several thousand years. They
17 have their respective political ideas and interests.
18 By race, the inhabitants are various; some provinces
19 mainly consist of the Chinese race, and some of an
20 alien race. The races exclude and despise each other
21 and there is an instance of a race having in recent
22 years slaughtered another one on a large scale.

23 The unification of thought is a matter claim-
24 ing prior settlement for the foundation of a unified
25

1 In addition, owing to the difficulty of
2 communications there are a few opportunities for them
3 to unify their thoughts by keeping in contact with
4 each other.

5 Accordingly, however great a statesman or
6 military clique, no one has ever succeeded in exer-
7 cising political control of China. With all the in-
8 fluence and ability of General Chiang Kai-shek, a
9 civil war is still prevailing even in China Proper,
10 which is due to the existence of the Chinese Communist
11 Party as well as the traditional force striking deep
12 roots behind it. Even the greatest statesmen, or the
13 most influential man in China, cannot control it polit-
14 ically. Much less the Japanese who have been the tar-
15 get of expulsion policies. So Japan is well aware
16 that it was impossible for Japan to exercise political
17 control over China by using her own force.

18 As a matter of fact, in regard to the civil
19 government within the limits of its military opera-
20 tions in China, the Japanese Army did not adopt the
21 system of administration toward occupied areas, but
22 chose the course of allowing the inhabitants to keep
23 public order,
24
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1 stabilize their livelihood and rehabilitate their
 2 economy autonomously. It is also needless to say that
 3 she had absolutely no intention to exclude third
 4 countries from the sphere of her military movement.

5 (A. See references listed below).

6 Although it is possible that there arose
 7 some temporary and anomalous situations because of
 8 the necessity of military movements, Japan followed
 9 the policy of restoring to normal conditions as soon
 10 as the Incident was settled. It is quite unavoidable
 11 that some anomalous situations should arise in the
 12 process of a military movement; even Great Britain
 13 definitely recognized the existence of a large-scale
 14 military movement between Japan and China, as a result
 15 of the Anglo-Japanese conversations concerning the
 16 Pientsin Incident.

17 The Ladybird, Panay and Hughessen Incidents
 18 were all caused by mistake in the military movement of

19 A. Ex. 2530; MITSUNAMI, Teizo's affidavit, T. 21,383-85
 20 Ex. 2531, T. 21,390-92; Ex. 2535, T. 21,423-26;
 21 Ex. 2532, KOBAYASHI, Yoshito's affidavit, T. 21,398
 22 21,402; Ex. 2533, T. 21,406-9; Ex. 2577, NAKAYAMA,
 23 Yasuto's affidavit, T. 21,888-913; Ex. 2537, HIDAKA,
 24 Shintaro's affidavit, T. 21,444-463; Ex. 323,
 25 21,468-9; Ex. 3095, T. 21,469-70; Ex. 328, T.
 21,476-483; Ex. 2539, YAMAMOTO, Yoshio's affidavit,
 T. 21,486-493; Ex. 2540, T. 21,495; Ex. 2541, T.
 21,506-10; Ex. 2542, T. 21,516-521; Ex. 2543, T.
 21,521-527; Ex. 2544, T. 21,528-529; Ex. 2545, T.
 21,529-536; Ex. 2546, T. 21,540-542; Ex. 2547, T.
 21,549-558; Ex. 3054C, T. 27,387-389.

the Japanese Army, but they have already been settled
by compensating for damages with the approval of the
injured party. (A. see references listed below).

It goes without saying that it was not with
an intention to exercise economic control over China
that Japan appealed to arms. In order to control it
economically, Japan must have, at least, military
and political control over China. However, there was
no objective possibility of Japan exercising military
and political control over China, nor had she any
intention to do so, as I have previously stated.

Such a situation is really excusable, because
it had necessarily arisen from the temporary state of
occupation by the Japanese Army on account of the
conflict between Japan and China. So it would be wrong
to consider it as exercising military and political
control, and it would be also a strained interpreta-
tion to consider it as exercising economic control
over China.

"Illegal or unfair economic control" does
not mean that Japan economically assumed a predominant

A. Ex. 2519, Tr. 21,337-39; Ex. 2530, T. 21,341; Ex.
2521, T. 21,345-8; Ex. 2522, T. 21,350-2; Ex.
2523, T. 21,353-6; Ex. 2524, T. 21,358; Ex. 2525,
T. 21,361/ Ex. 2526, AOKI, Takeshi's affidavit,
T. 21,363-6; Ex. 2527, T. 21,367-8; Ex. 2528,
T. 21,371; Ex. 2529, TOZUKA, Michitaro's affidavit,
T. 21,373-6; Ex. 2534, T. 21,410-12.

position in China in a really fair and proper way.

1 Even under the principle of equal opportunity,
2 one who makes more contributions and benefits than
3 others can economically assume a predominant position
4 in any country. This is to be approved, for free
5 and fair competition can exist under the principle
6 of equal opportunity.
7

8 What Japan was aiming at was to develop
9 China's unexploited resources by investing her capital
10 and displaying her technical and managing ability in
11 close collaboration with the Chinese inhabitants, so
12 that the resources may be utilized by the Chinese
13 as well as by the Japanese, paying so much money.
14 Japan also wanted to export the goods needed by China,
15 so as to promote foreign trade, or in other words, to
16 enrich the life of the Chinese people and also benefit
17 the Japanese themselves.
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1 SECTION VII.

2 Japan desired economic activity in the sense
3 which meant the Sino-Japanese economic cooperation.
4 Except in this sense, Japan did not seek any other
5 economic sway in China by obtaining therein military
6 and political controls.

7 The just Japanese economic activities in
8 China having been blocked by the Chinese anti-Japanese
9 agitation which was executed virtually by pressing
10 Japan economically with force and military, Japan
11 naturally desired to eradicate this and this motive of
12 Japan should not be confounded with obtaining economic
13 sway by military influence.

14 Accordingly, it is a great mistake to conclude
15 Japan's development and utilization based on the
16 policies aforesaid as an act of economic aggression.

17 It is actually true that in wartime some
18 Japanese troops took over some Chinese business, but
19 this was done only within the necessary limit of
20 maintaining economic order on the spot, and was
21 never aimed at economic aggression.

22 Such acts of taking over were for providing
23 the residents of the occupied areas with their require-
24 ments, for defending their business equipment from
25 the plunder and destruction by communists and bandits,

1 and, above all, in accordance with the right of the
2 occupation forces laid down in International Law,
3 for the purpose of procuring provisions and supplying
4 the forces on the spot and this act, of course, must
5 cease to continue with the end of the incident and
6 it in fact ceased.

7 Therefore, even in the time of the Incident
8 the Japanese forces did their best to return factor-
9 ies and other possessions to China so that normal
10 conditions might be regained.

11 Meanwhile, China, turned into a battlefield,
12 was very much devastated economically and its economic
13 rehabilitation was the most pressingly imminent mat-
14 ter. Because of the fact, however, that most promin-
15 ent Chinese ran away from the scourge of the war,
16 Japan, complying with the wishes of the remaining
17 Chinese, was constrained hastily to give aid to
18 the autonomous economic rehabilitation of the Chinese
19 for promoting of their welfare. (a)

20 But the Japanese forces, refraining from di-
21 rectly concerning themselves in this task, made the
22 Japanese and Chinese civilians begin the autonomous
23 joint operation between them, the birth of the North
24

25 (a) Ex. 2579, affidavit of OIKAWA, Genshichi,
T. 21,950-21,958.

1 China Development Company Ltd. and the Central China
2 Development Company Ltd., being the fruits thereof.
3 These two companies irrespective of their interests,
4 restricted their own operations chiefly to the most
5 necessary work for the national life, the nature of
6 which was, therefore, substantially different from
7 that of the British East India Company.

8 The North China Development Company Ltd. was
9 organized on the 7th of November 1938 with a capital
10 of ¥350,000,000 which they invested in the establish-
11 ment of a harbor, the facilities of communications,
12 the electric industry, mining and salt-manufacturing.
13 The Central China Development Company Ltd. was organ-
14 ized with a capital of ¥100,000,000 which they invest-
15 ed in railway transportation, electric and gas enter-
16 prises, and mining industry. And the works of both
17 companies brought about the economic welfare of China,
18 while Japan suffered considerable loss therefrom. (a)(b)
19

20 For the purpose of promoting Chinese welfare
21 by furthering the results of the Sino-Japanese
22 economic cooperation, Japan set up the China Affairs
23 Board, thereby rendering every effort in her power
24 for the rehabilitation of China.

- 25 a. Ex. 2576, aff. of KAWAMOTO, Yoshitaro, T. 21,874-81
b. Ex. 2579, aff. of OIKAWA, Genshichi, T. 21,950-
21,958.

Japan truly neither intended by force to
1 acquire the markets and the productive power, nor did
2 she intend to secure supremacy, predominance and monop-
3 oly. The pressure of the foreign powers upon Japan
4 induced her inevitably into adopting the self-support-
5 ing policy by means of the Japan-China-Manchukuo
6 economic cooperation, which never meant the antagoniz-
7 ing of third powers. In the counts of the Indictment
8 is stated that our exercising force over China is a
9 violation of the treaty agreements of security pro-
10 vided in International Law. But this statement is
11 wrong.

Regarding the obligation laid down concerning
13 the commencement of hostilities in Article I of the
14 Hague Convention in 1907 as "Hostilities between
15 themselves must not commence without previous and
16 explicit warning, in the form either of a reasonable
17 declaration of war or of an ultimatum with conditional
18 declaration of war," Japan as one of the contracting
19 powers should be naturally under the obligation thereof.

21 However, faced with the urgent necessity for
22 self-defense, Japan entered into the hostilities with
23 China purely not only for the purpose of ending the
24 hostile acts by China against the interest of Japan,
25 which was of special and grave concern to her exist-

1 ence, but to seek the Chinese Government's reexamina-
2 tion of its attitude. This not being hostilities
3 properly to be called war, Japan was not yet under
4 the obligation to warn previously as provided in
5 International Law. But our local armies, on their
6 taking military actions, never failed to give
7 warning previously to the Chinese Government. But
8 these hostilities for the cause of self-defense were
9 speedily aggravated because China commenced the
10 attack in a comprehensive manner, until at last it
11 presented a war aspect; that is, the hostilities for
12 our self-defense turned so instantly into a war as-
13 pect that in fact it was impossible by all means
14 for Japan to warn previously. Japan and China had
15 equally, as the contracting powers of the Hague Con-
16 vention, the obligation to declare war and to give
17 other previous warnings. Even China, which had the
18 intention from the first phase of the hostilities to
19 challenge Japan comprehensively to war, did not for
20 ages declare war. Therefore, Japan, which had been
21 longing for an early peace, was dragged on into the
22 war as she was challenged, although expecting the
23 peace was immediately attainable. As for Japan
24 who, as is clear from KONOYE's statement, adhered to
25 her national policies of "friendship" and "Sino-

Japanese cooperation," she was worried that the formal
1 declaration of war would make it difficult to restore
2 Sino-Japanese peace. In other words, Japan thought
3 it rather desirable, in order not to make the settle-
4 ment of the dispute difficult, to keep the Sino-
5 Japanese dispute from entering into a state of war as
6 far as possible; and furthermore, as a diplomatic
7 reason, the policy of Japan to avert the outbreak of
8 a world war as far as possible prevented her from
9 declaring war; that is, as Britain was then showing
10 bluntly a sympathetic attitude towards China, in case
11 of Japan's declaration of war the Sino-Japanese dis-
12 pute should turn into a state of war both substantial-
13 ly and formally, and such war in East Asia would, it
14 was feared, involve Europe. In addition to this,
15 the worry that America would be induced to enter the
16 war, which Japan most feared, was strongly prevailing.
17

18 And if the above described situation should
19 come about, a world war was certain.

20 As can be seen, not only was it impossible
21 to warn previously but also even to declare war
22 against China was impossible from our diplomatic and
23 other standpoints.
24

25 As already mentioned the China Incident broke
out on the 7th of July 1937 at Lukowkiao with the

1 sudden firing of the Chinese forces at the Japanese
2 forces practicing then at night. Thus Japanese
3 forces were constrained to appeal to arms in the
4 face of this challenge, which meant fully the
5 exercise of the right of self-defense. And Japan
6 made many efforts to settle the incident locally
7 and to avoid aggravating it in its scope; her plan
8 of tactics was drawn up merely within the range of
9 such necessary purposes as the protection of her
10 rights and interests in China and of her nationals.

11 The Chinese Government, however, fell into
12 the intrigue of the Chinese communists who intended to
13 expand their influence by stubbornly carrying out
14 the anti-Japanese war; the government, as aforesaid,
15 came to agree to collaboration between the National-
16 ists and the Communists in accordance with the
17 Declaration of August 1, the December Resolutions
18 of the Chinese Communists, the Sian Incident, etc.,
19 and by the time of the outbreak of the Incident,
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1 China had already been mobilizing and concentrating
2 military strength on a large scale with the intention
3 of challenging Japan thoroughly and comprehensively.
4 This attitude of China caused the Liuktochaio Incident.
5 And China's attitude in the solution of it was always
6 faithless, causing the incident gradually to expand.
7 Thus, China herself forced Japan to enlarge the hostil-
8 ities for self-defense; further, she did not declare
9 war because she too did not deem these hostilities
10 war as prescribed in International Law. Therefore,
11 though the China Incident was gradually aggravated until
12 it took the shape of war, Japan should not be charged with
13 breaching International Law. Next, the fact that Japan
14 used her troops in the actions towards China is not a
15 violation of the obligation to settle international
16 disputes peacefully. It goes without saying that Japan
17 had the duty to observe all the treaty articles in which
18 the obligation to settle peacefully was provided, because
19 Japan was one of the contracting powers, but since these
20 Sino-Japanese hostilities were an armed conflict based
21 on Japan's right of self-defense, it is not a violation
22 by Japan of these treaties. a, b, c

- 24 a. Ex. 2502, T. 20,868-20,870
25 b. Ex. 2503, T. 20,874-20,879
c. Ex. 2509, T. 21,008-11

1 Japan's declaration of "the absolute opposition
2 to any interference in China's affairs by any power
3 except Japan" on the 18th of April 1934 was never intend-
4 ed to mean aggression by Japan. Since quite a long
5 while before, Japan had adopted the policy of settling
6 Sino-Japanese problems only between themselves, and the
7 reason for this was that any third power's interference
8 in a matter between Japan and China would more complicate
9 than simplify it, rendering the solution thereof more
10 difficult in the long run.

11 The reason why Japan withdrew from the League
12 of Nations is because the League itself did not know
13 that China's internal affairs and her international
14 relations were actually very complicated and difficult;
15 accordingly it was strongly feared that a League of
16 Nations' effort to bring about peace in the Orient might,
17 on the contrary, disturb public peace in the Orient,
18 owing to its lack of knowledge of the real state of
19 conditions in the Orient. The reason why Japan refused
20 to participate in the Advisory Committee of the League
21 of Nations on the 25th of September 1937 is because four
22 years before Japan had already withdrawn from the League
23 of Nations; therefore she neither had the obligation to
24 participate in it, nor did she feel the necessity to do
25 so. This attitude of Japan was not unlawful in any way.^a

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2 to any interference in China's affairs by any power
3 except Japan" on the 18th of April 1934 was never intend-
4 ed to mean aggression by Japan. Since quite a long
5 while before, Japan had adopted the policy of settling
6 Sino-Japanese problems only between themselves, and the
7 reason for this was that any third power's interference
8 in a matter between Japan and China would more complicate
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14 relations were actually very complicated and difficult;
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17 on the contrary, disturb public peace in the Orient,
18 owing to its lack of knowledge of the real state of
19 conditions in the Orient. The reason why Japan refused
20 to participate in the Advisory Committee of the League
21 of Nations on the 25th of September 1937 is because four
22 years before Japan had already withdrawn from the League
23 of Nations; therefore she neither had the obligation to
24 participate in it, nor did she feel the necessity to do
25 so. This attitude of Japan was not unlawful in any way.^a

1 Also, it was natural that we had to lodge an
2 absolute objection to the fact that the Japanese
3 Government's declaration of the 4th of November 1938
4 "The Nine Power Pact Obsolete", was deemed unlawful
5 and was cited as evidence of crimes against peace.

6 SECTION VII

7 The Nine-Power Pact was concluded in 1922
8 for the purpose of protecting the territorial integ-
9 rity of China. However, the international situation
10 in the East, especially in China, had undergone a
11 great deal of change in fifteen years and moreover
12 Russia was not a participant in the Pact. She had
13 just revolutionized herself when this treaty was
14 concluded and was not able to participate in it.
15 But conditions in the Far East after the lapse of
16 fifteen years had made this treaty of which she was
17 not a signatory utterly nominal and unworkable. In
18 other words, the Chinese Government, resorting to
19 action against Japan, crying for her deliverance from
20 the aggression of Japan and for Japan's overthrow,
21 made it her national plan to formulate an anti-
22 Japanese front in cooperation with the Chinese
23 Communist Party which had already declared war
24 against Japan. And in violation of the resolutions
25 at the conclusion of the Nine-Power Pact limiting

1 employment of military force, the armed forces of
2 China were considerably increased in number.

3 The extensive Outer Mongolia which belongs
4 to the territory of the Republic of China was
5 wholly placed within the sphere of influence of
6 the Soviet Union. Events in Shinkiang and Tibet
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1 must have been occurrences which the Republic of China
2 could not possibly have expected to be solved under
3 the Nine-Power Pact.

4 For Japan, whose fate is quite influenced by
5 the Republic of China under such circumstances, and who
6 was forced to resort to warfare by way of self-defense
7 against the challenge by China, it is not only exceed-
8 ingly irrational, but also incompetent to be bound
9 literally by the Treaty.

10 But as to whether a war of aggression should
11 be asserted as constituting a crime or not, no doctrine
12 has ever been set forth until today.

13 This having been discussed twice in the assembly
14 of the League of Nations, the proposals that a war of
15 aggression should constitute a crime of murder were all
16 abortive there. As it was impossible for international
17 jurists to establish distinction between a lawful war
18 and an unlawful one, decisive penalties based upon this
19 distinction failed to be fixed in several assemblies.
20 Particularly, the peace protocol debated in the second
21 assembly, in spite of the fact that it was signed by all
22 states, was ratified by none of them; Great Britain was
23 indeed the first to refuse ratification thereof.

24 Such being the case, the international law
25 in which a war of aggression constitutes a crime has

not yet been established. It must be said to be improper that the theory of a crime, of which international law does not treat, should be forcibly applied to the case of Japan, the defeated state. As to how highly the armed forces of Japan were attentive to the furtherance of military laws and the re-establishment of military morale by making efforts to observe strictly the laws of warfare throughout the China Incident, the military commanders' orders and instructions and other evidence afford ample proofs thereof. But of course we cannot

- a. Exhibit No. 2548, TSUKAMOTO, Kenji (21562-63)
- b. Exhibit No. 2549, KIKKAWA, Masaharu (21585)
- c. Exhibit No. 2550, KIKKAWA, Genzo (21588)
- d. Exhibit No. 2551, YOSHIBASHI, Kaizo (21594)
- e. Exhibit No. 2555, IKEDA, Ryuzaburo (21614)
- f. Exhibit No. 2556, MIYASAKI, Shuichi (21619)
- g. Exhibit No. 2558, MASUDA, Kanetoshi (21633)
- h. Exhibit No. 2559, AKAGI, Kiyoji (21644)
- i. Exhibit No. 2560, OYAMA, Fumio (21659-21661)
- j. Exhibit No. 2479, KAWABE, Shozo (21701 & 21705)
- k. Exhibit No. 2561, (21730 & 21731)
- l. Exhibit No. 2562, (21736 - 21738)
- m. Exhibit No. 2563, AMANO, Shoichi (21750-21751)
- n. Exhibit No. 2565, (21759 - 21760)

(continued on next page)

1 deny that there were a few, among hundreds of thousands
 2 of Japanese soldiers, who committed outrages. Against
 3 such outrages the leaders of the Japanese army did their
 4 best in resorting to all possible precautions, and upon
 5 those who defiantly dared to transgress against the pre-
 6 cautions severe penalties were inflicted for the purpose
 7 of maintaining military laws and morale. In defensive
 8 warfare attacks and subsequent deaths of men

(continued from preceding page)

- 9 o. Exhibit No. 2566, USHIJIMA, Sadao (21766)
- 10 p. Exhibit No. 2567, SANO, Torata (21776-7; 79-80)
- 11 q. Exhibit No. 2571, SAKURAI, Tokutaro (21793)
- 12 r. Exhibit No. 2572, YOKOYAMA, Isamu (21800-21803)
- 13 s. Exhibit No. 2573, ARUGA, Kazunaga (21808-21811)
- 14 t. Exhibit No. 2577, NAKAYAMA, Yasundo (21896-98,
 15 21901-21903-21904-21906)
- 16 u. Exhibit No. 3073, SAWADA, Shigeru (27447)
- 17 v. Exhibit No. 3075, KOMODA, Koichi (27478)
- 18 w. Exhibit No. 3076, OKADA, Yoshimasa (27482)
- 19 x. Exhibit No. 3077, KOYASEKO, Kaname (27489)
- 20 y. Exhibit No. 3078, TOYOSHIMA, Fusataro (27495-6)
- 21 z. Exhibit No. 3079, SUZUKI, Teiji (27501-27502)
- 22 a'. Exhibit No. 3080, YONEYAMA, Beika (27505)
- 23 b'. Exhibit No. 3081, KURODA, Shigenori (27510)
- 24 c'. Exhibit No. 3082, ABE, Yoshimitsu (27522-27523)
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1 are naturally justified in the light of laws of
2 hostilities and do not constitute any crimes
3 whatever.

4 But it goes without saying that unlawful
5 acts, except death inevitable in such hostilities,
6 should deservedly constitute crimes.

7 It is alleged in the Indictment that during
8 the China Incident Hankow, Changsha, Hengyang,
9 Kweilin, and Liuchow were all the scenes of
10 flagrant massacres, but witnesses testified the
11 allegations that the armed forces of Japan had dared
12 to commit such massacres were utterly false, and that
13 prosecution's evidence was extremely scant.

- 14 a. Exhibit No. 2549, KIKKAWA, Masaharu (21583-85)
- 15 b. Exhibit No. 2550, KIKKAWA, Genzo (21587-21589)
- 16 c. Exhibit No. 2551, YOSHIHASHI, Kaizo (21592-96)
- 17 d. Exhibit No. 2552, SAITO, Torajiro (21598)
- 18 e. Exhibit No. 2553, OGI, Eiichi (21601-21605)
- 19 f. Exhibit No. 2554, OGAWA, Saburo (21608-21609)
- 20 g. Exhibit No. 2555, IKEDA, Ryuzaburo (21612-21615)
- 21 h. Exhibit No. 2556, MIYASAKI, Shuichi (21618-21622)
- 22 i. Exhibit No. 2587, MORIOKA, Ko (21624-21627)
- 23 j. Exhibit No. 2558, MASUDA, Sanetoshi (21631-21633)
- 24 k. Exhibit No. 2559, AKAGI, Kiyoji (21641-21645)
- 25 l. Exhibit No. 2479, KAWABE, Shozo (21698-21702)

Care must be taken about numerous cases in which slaughter
 1 of Chinese people was perpetrated by their own soldiers.
 2 For instance, the Chinese army had its surveillance unit
 3 which made it its duty to attack from behind the
 4 retreating soldiers, with the object of surveillance.

(continued from preceding page)

- 5 m. Exhibit No. 2564, AMANO, Shoichi (21748-21753)
- 6 n. Exhibit No. 2566, USHIJIMA, Sadao (21765-21767)
- 7 o. Exhibit No. 2567, SANO, Torata (21770-21801)
- 8 p. Exhibit No. 2568, 21782
- 9 q. Exhibit No. 2569, 21783
- 10 r. Exhibit No. 2570, 21784
- 11 s. Exhibit No. 2571, SAKURAI, Tokutaro (21792-94)
- 12 t. Exhibit No. 2572, YOKOYAMA, Isamu (21796-21803)
- 13 u. Exhibit No. 2573, ARIGA, Kazunaga (21808-21811)
- 14 v. Exhibit No. 2577, NAKAYAMA, Yasundo (21888, 21909)
- 15 w. Exhibit No. 3073, SAWADA, Shigeru (27444-27449)
- 16 x. Exhibit No. 3075, KOMODA, Koichi (27477-27478)
- 17 y. Exhibit No. 3076, OKADA, Yoshimasa (27480-27483)
- 18 z. Exhibit No. 3077, KOYAS-EKO, Kaname (27488-27491)
- 19 a'. Exhibit No. 3078, TESHIMA, Fusataro (27494)
- 20 b'. Exhibit No. 3079, SUZUKI, Teiji (27500-27502)
- 21 c'. Exhibit No. 3080, YONEYAMA, Beika (27504-27506)
- 22 d'. Exhibit No. 3081, KURODA, Shigenori (27509-27511)
- 23 e'. Exhibit No. 3082, ABE, Yoshimitsu (27519-27526)
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1 The Chinese soldiers, in the last analysis,
2 were obliged either to be attacked by the Japanese army
3 when they advanced or fired by its surveillance unit
4 when they retreated. And the Chinese who were assumed
5 to have friendly feeling towards Japan were cruelly
6 murdered under the terrible name of "Kankwan" (T.N. a
7 Chinese spy upon his own country) by way of being made
8 an example to their fellow countrymen.

9 If the existence of such facts be clearly
10 recognized, whatever misunderstanding originated from
11 the conjecture that the Chinese casualties were all
12 caused by outrages that the Japanese soldiers committed
13 would be dissipated.^a

14 As perfect peace in the Republic of China was
15 the most longed-for goal that Japan hoped to attain,
16 she continued to make efforts for the prevention of
17 the spreading of the Incident and for the attainment of
18 peace at an early stage, from the very beginning.

19 To make it more exact, some time about June
20 1938, somewhere in North China Japan strove for open-
21 ing peace negotiations with the Chiang Kai-shek Govern-
22 ment through Hsiao, and some time around the fall of
23 Nanking she planned to invite peace between her and the
24 Republic of China through the medium of the German
25

ambassador to China, Trautmann.

1 I In the third place, we can find nowhere
2 evidence that Japan participated in the opium policy
3 of China in order to impair the health of the Chinese
4 populace and to weaken the anti-Japanese power. Japan
5 is, too, guiltless of the charge that she gained a vast
6 amount of profit from the opium policy and of appropriat-
7 ing it to war funds.^a The opium brought to Shanghai
8 and Nanking has no direct connection whatever with the
9 competent organs of Japan. a, b, c, d

10 Originally, the Japanese Government designed not
11 only to discharge faithfully the obligations of treaties
12 it contracted with other states for strict control over
13 both the Japanese at home and the Japanese residents in
14 China against the illicit traffic in narcotic drugs
15 prepared with opium, but also to impede the dreadful
16 harms incurred by the abuse of them. General Chiang
17 Kai-shek had resorted to measures of total abstinence
18 from opium-eating in order to extirpate the harms of
19 opium, but whatever the suppressive steps, they failed
20

21 a. Exhibit No. 389, 4763

22 b. Exhibit No. 2574, 21865021866, NAKAMURA, Tatsuji

23 c. Exhibit No. 2575, MORI, Tokuji, 21868-21869

24 d. Exhibit No. 2583, FUJII, Shigeru, 22078-22079

25 e. Exhibit No. 2479, KAWABE, Shozo, 21703-21703

1 to make the opium-eaters give up their habit, and, however
2 severe the punishments, they could not frighten them.

3 These have time and again been put to test, but in vain.

4 Though the new Chinese Government showed grave
5 concern in setting up a plan against the opium problem
6 that confronted its country, and strove to put the plan
7 into operation, yet it, taking warning from the failures
8 hitherto repeated, hesitated to adopt the measure of
9 total abstinence from opium-eating and resorted to a
10 policy of gradual elimination of opium-eaters by
11 officially admitting eaters to be provided the smallest
12 necessary quantity of opium. In consequence, some stores
13 were permitted to put opium on public sale, but those who
14 were without certificates and were not opium-eaters were
15 absolutely prohibited from buying even the smallest
16 quantity of it.^a

17 As Japan once adopted this policy for gradual
18 elimination of opium-eaters in Formosa with good success
19 and had won universal admiration, she wished it to be
20 enforced also in the Republic of China with the view to
21 eliminating the ravages of opium. Approving of Japan's
22 desire, the new Government of China put it into operation.

23 This is the only point in which Japan is
24 connected with the opium problem of the Republic of
25

a. Exhibit No. 3154, BABA, Hayao, 28053

1 China. It would be markedly improper to allege this act
2 of Japan to be evidence of a crime against peace.

3 As already mentioned, the China Incident had its
4 origin when the Japanese army there was driven to take
5 action in self-defense for its very life, against the
6 planned challenge of the Chinese Government, which
7 challenge was the manifestation of intent to oust Japan
8 from her rights and interests in China by a coalition
9 with the Chinese Communist Party, a snare into which
10 the Chinese Government fell.

11 That this act of self-defense failed to termin-
12 ate in a short time was due to the conditions previously
13 stated. The China Incident was never a war of aggress-
14 ion. Japan had not the least intention to dominate
15 China, either militarily or politically or financially.
16 The accused did not contravene international law and
17 they can not be accused of war crimes. We assert these
18 points most emphatically.

19 Mr. Cunningham will continue with the summation,
20 your Honors.

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THE PRESIDENT: Captain Kraft.

LANGUAGE ARBITER (Captain Kraft): If the Tribunal please, the following language correction is submitted: Exhibit No. 1975, page 5, lines 1 and 2, admitted on record page 14,520: Delete "we succeeded in making them all take oath" and substitute "we were able to secure the pledge from all of them."

THE PRESIDENT: Mr. Cunningham, after the summation that you are about to read was served on the Judges, I was informed that the summation had been served inadvertently, and that you desired to make alterations. Subsequently four of the Judges suggested alterations which I passed on to you. What is the position now, Mr. Cunningham?

MR. CUNNINGHAM: You received your advance copies at the same time that all other defense counsel received theirs. It was the first draft before any alterations or suggestions even had an opportunity to be incorporated. I have incorporated now in the draft all of the suggestions from the Tribunal, from the defense counsel, and anything that has been suggested that was disagreeable I think has been eliminated from the thing.

I want to suggest that KOISO and MINAMI are specifically exempted from this statement because

1 they are not involved in any way.

2 I will now present the defense summation
3 on the relations of Japan to Germany and Italy.
4 Although the prosecution has seen fit to inject its
5 proof concerning the relations of Japan to Italy and
6 Germany into many different phases of its case, and
7 over a long period of time from June 1946 to February 1,
8 1948 and later, and scatter its argument in the same
9 way, we shall attempt to answer their general charges
10 and explain our evidence as it relates to their case
11 generally on this subject by this one document. In-
12 dividual defendants will explain their own interpreta-
13 tion of all the events affecting them in their par-
14 ticular summations.

15 Inquiry Extended Beyond Tribunal's Jurisdiction.

16 2. We have contended from the first, and
17 still urge, that the scope of this inquiry was unneces-
18 sarily extended to activities of the representatives
19 of the Japanese nation, which took place in parts of
20 the world other than in Japan and the Far East. We
21 have attempted to answer item by item, and to explain
22 with clarity the true intention of Japan and parties
23 alleged to be responsible for the relations between
24 the three nations involved, Italy, Germany and Japan.
25

~~We have been considerably handicapped by~~

1 virtue of the fact that even though the prosecution
2 could bring witnesses from the far corners of the
3 earth, and that expense was no object to them in
4 making their investigations, we were ~~then~~ then the next
5 line is omitted. This was due to lack of facilities
6 of travel and the inconvenience of interviewing of
7 witnesses. Due to the nature of this trial and the
8 manner in which the prosecution presented its material,
9 it was impossible to attend court and travel the world
10 in search of witnesses and documents at the same time.
11 Even with the limited resources at our command, we
12 believe we have won the issue.* We shall give our inter-
13 pretation of the evidence which has been adduced on
14 both sides and call attention of the Tribunal to the
15 illogical and wholly untenable position of the prose-
16 cution, particularly the allegations contained in
17 Count V. Our contention that agreement among nations
18 for political or economical domination are not crimes
19 within the contemplation of the Charter will be
20 especially emphasized. We shall follow the outline
21 presented by the prosecution in order to make it
22 simpler for the Members of the Tribunal to compare
23 the claims and digest the proof.

24 Language Difficulty.

25 3. Although the prosecution had the problem

of dealing with Japanese and English and other languages, it must be appreciated that we had the task of reading and digesting German documents covering the whole world situation. (Period 1931-45).

Full Discovery of Facts Impossible.

4. We do not pretend to have given to this Tribunal the whole story behind the Japanese-German relations. In diplomacy this is impossible. One of the first things which happens when diplomatic relations are broken off is that all documents are burned. This has been a custom for centuries. It is a significant event. Since diplomatic correspondence has always been protected by custom, law and privilege,^{1.} relations between nations have never been within the realm of judicial inquiry before. Only after a war, such as now, could such a trial be possible. In peacetime such a breach of etiquette would be considered an act of war in itself.^{2.} History records such instances. This hearing could not possibly explore the depth of the intrigue involved; it has only scratched the surface. History will be a long time discussing and solving the problems which have been subject of our brief inquiry here under the issues raised in Count V.

(1. Moore 678-680. Hyde #428, 454)
(2) Wilson Sec. 72a, P. 194, 3 ed.)

Count V Vague and Indefinite.

1
2 5. Although the Charter calls for a plain,
3 concise and adequate statement of each offense charged,
4 we submit that Count V does not meet this test.^{1.} The
5 Tribunal at Nuernberg required that an agreement
6 between parties must cover "the intent to make war
7 on some particular nation at some specific time."
8 No such allegation is contained in Count V of the
9 prosecution's Indictment and no proof has been adduced
10 to substantiate such a charge. In our submission of
11 proof we have found it necessary to meet this vague
12 and pointless charge.

Nuernberg Decision Bad Law.

13
14 7. The prosecution falls back constantly
15 upon the agreement between the four nations for the
16 trial of the Axis criminals. Whether that was a proper
17 exercise of the rights of these powers under the sur-
18 render and occupation in Europe is a matter which
19 cannot be settled or even investigated here. It is
20 evident that the scholars and writers and jurists
21 of the world are divided in their opinions on the wis-
22 dom of the action which brought about the Nuernberg
23 trial.^{1.}
24

25 (5. 1. Sec. 3, Art. 9-A)

(7. 1. Vol. 33 Va. Law Review P. 679)

The comment of the bar is still divided on this point. To say that it was a mistake for our victorious nations to try the German leaders would not be to make a hasty judgment. Now that it has been done we need not await the judgment of history and peacetime consideration. If there had been no persecution of minorities in Germany, this would have been just another war for history to record. There is no excuse to be offered for these actions. We have no parallel to these acts arising out of the Pacific War. There cannot be any debate on this point.

Potsdam Declaration Cannot be Extended.

8. Although the prosecution claims much more for the Potsdam Declaration than it says, we suggest that it does not give this Tribunal any right to look into the events which transpired in Europe. If that document gives this Tribunal, through remote control, any power in the premises, it must be confined strictly to the trial of Far Eastern War Criminals as individuals.

9. Re B-Series. Crimes Against Peace, the Law, Aggressive Warfare.

Re B-1. It is the contention of the defense that the charges set out in the Indictment in Count V (8. 1. Ex. 2, T. 109)

are not supported by any charge or crime defined in
 1 the Charter.^{2.} Neither is the offense described in
 2 Count V recognized in International Law as malum per
 3 se or malum prohibitum.^{3.} We recognize that domination
 4 of the world is a responsibility of nations, the major
 5 nations of the world; it is a duty of the powerful na-
 6 tions. Such an aim has never been a crime or even
 7 mentioned as a crime. The Charter never intended any
 8 inquiry beyond "the just and prompt trial and punish-
 9 ment of Major War Criminals of the Far East."^{4.} Nothing
 10 is said or even implied in its terms about European
 11 nations or the subject. It can be taken that they
 12 were specifically excluded by their trial at Nuernberg
 13 and the provisions of the Charter which follow. The
 14 Charter is further restricted to "Persons who, as indiv-
 15 iduals or as members of organizations, are charged
 16 with offenses which include crimes against peace."^{1.}
 17 Nations such as Germany and Italy cannot be considered
 18 as persons.^{2.} We submit that the scope of this inquiry
 19 does not cover the operations, negotiations or sover-
 20 eign acts of European nations or leaders. This point
 21 will be argued more fully later and supported by what
 22 the authorities say on the subject.
 23
 24

25 (9. 2. Sec. 2, Art. 5, A.B.C.

3. Moore #197 200-202, Wilson Sec. 48, Fl 130

4. Art. I, Sec. I.

1. Sec. 2, Art. 5.

2. Wilson Sec. 7, . 18.)

Re C-1. Prosecution Changes its Course.

1 10. Re C-I. In this charge the prosecution
2 changes the course somewhat. They begin their disserta-
3 tion on the law of conspiracy with the charge that in-
4 dividuals, persons, must act through themselves and
5 through each other, but then they change their course
6 and say that the persons acting through Japan, either
7 alone or in combination with other countries, wage,
8 declared, etc. It is difficult to grasp how the prose-
9 cution can undertake to try the nation of Japan, and
10 other nations, when clearly the jurisdiction of this
11 Tribunal is limited to a few persons and offenses,
12 individuals.
13 3.

Charter Not Authoritative.

14 11. Re C-3. There is no basis in law or
15 fact for the assertion of the prosecution that the
16 Charter complies with any of the requirements for the
17 sources of law.
18 1.
19 The Nuernberg judgment although volum-
20 inous is not authoritative. Skip the next sentence.
21 Noble effort has been made by Justice Jackson and
22 others to give it weight and substance, but it will
23 not survive the test of law. Such a decision, based
24 as it is upon ex post facto law will never be accepted,
25 (10. 3. Sec. 2, Art. 5, L3)
(11. 1. Corbett P.V. Art. 38, St. Perm. Court)

under our system of justice at least.

Claims Inconsistent.

12. C-15. In applying the prosecution's test of Conspiracy to the Charge in Count V and the proof which they have supplied under it, they have defeated their own purpose. They say: "The Conspiracy must be clearly outlined in its criminal purpose. It must not be too far removed from the time of decision and action." The Tribunal must examine whether a concrete plan to wage war existed, and determine the participants in that concrete plan.^{3.} In all of the discussions and argument and attempts at proof under the German-Japanese relations there has never been one iota of proof that the nations planned any war against any nation at any time jointly -- eliminate the next two words.

It is quite evident that Germany was not involved in the Far Eastern activities of Japan.^{1.} Germany was helping China with supplies, officers and technical advice in the struggle between Japan and China.^{2.} The prosecution proved this conclusively. There is no contention that Japan and Germany confided in each other about the attack on Pearl Harbor. There can be no doubt

(12. 3. Pros. C-15.

1. Ex. 2762, T. 24742.

2. Ex. 486-A, T. 5980.)

1 now that Japan kept her plans for the Pearl Harbor
2 attack secret from Germany, even from their envoy in
3 Berlin.^{3.} On the other side, we do not understand
4 that the prosecution has offered any proof on the ques-
5 tion of the war against Poland. Japan was against this
6 war, but was never consulted. Soviet Russia acquiesced
7 in this war when she made the agreement with Germany
8 August 23, 1939.^{4.} It is now history, well confirmed,
9 that Italy refused to join Germany in the war against
10 Poland.^{5.} There can be no claim that Japan welcomed
11 the war between Germany and Russia. Japan counselled
12 Germany against such a move and refused many times to
13 join, after many strong invitations, as Ribbentrop said,
14 "after the Russian war broke out I tried to get Japan
15 against Soviet Russia.*****I got the impression that
16 Japan did everything possible to keep out of a conflict
17 with Soviet Russia and to keep from antagonizing Soviet
18 Russia in any way."
19

20 There certainly was never any agreement between
21 the leaders of the nations to make war on any nation.
22 The prosecution has failed to meet their own require-
23 ments. The German and Japanese relations were not
24 constant enough, not close enough to be called friendly

25 (12. 3. Ex. 2762, T. 24744.

4. Ex. 2725, T. 24187.

5. Nuernberg Transcript)

even, far less close as the Russian-German relations. Since the Tribunal has determined that the relations between Germany and Russia and other nations are irrelevant to any issue in this case, and that the negotiations of Germany with other nations were kept secret from Japan and OSHIMA, this ruling should dispose of any issue arising under Count V, if we understand the ruling correctly

2. Conspiracy.

Thus far we have considered the relation of the Indictment to the Charter and to the law of this case. We have touched generally upon the contentions of the prosecution in relation to the application of the law of nations to individuals. We are more concerned in this review with the effect of the Charter upon the rights and privileges of nations named in Count V, Italy, Japan and Germany.

There is no claim made in the summation that Japan assisted Germany in Europe in any way except politically prior to the commencement of the war in Europe. There is evidence that Germany assisted China in her war against Japan.^{1.} The prosecution agrees that Germany sought advantages in the economic field in the Far East but that her efforts were thwarted.^{2.}

(1. Ex. 486-A, T. 5980.

2. T. 37901, 22-12a.)

1 It is our theory that economic relations between the
2 nations are not a proper subject of inquiry here.^{3.} We
3 must assume that no nation would spend millions of
4 dollars maintaining embassies in the capitals of the
5 world without some hope of economic assistance by way
6 of trade and commerce.^{4.} War and Peace have a relation
7 to economic matters, but the purpose of international
8 intercourse is primarily the promotion of the economic
9 welfare of each nation while maintaining peaceful rela-
10 tionships.^{1.}

11 13. Re F-93. The prosecution suggests that
12 Japan had two courses with respect to the settlement
13 of her differences with the Soviet Union. One was
14 diplomacy, the other was war. That she chose diplomacy
15 has been proved. She played politics and protected
16 herself against the threat of the Soviet Union until
17 the end of the war, or nearly the end.

18 Re F-103. The prosecution has proved, through
19 an abundance of evidence, that it was Germany which
20 approached Japan for an agreement; at a time when
21 Japan was conducting normal diplomatic relations, as all
22 of the other nations of the world, with Germany. The
23 prosecution emphasizes that the military attache in
24

25 (3. Sec. 2, Art. 5 Charter.

4. Hudson & Feller, P. 1253.

1. Feller & Hudson Diplomatic & Consular Laws,

Vol. II, P. 1253 I (b)

1 Germany was instructed to keep an eye on Soviet Rus-
2 sia. This we admit. The authorities all agree that
3 it is the duty of the military attache to gather in-
4 formation about the armies of the nations to which
5 accredited and about the armies opposing them, in
6 peacetime or wartime. There is no controversy about
7 this.

8 14. We suggest that the negotiations for
9 the Anti-Comintern Pact were normal and followed the
10 pattern of diplomacy. We need not detail the nego-
11 tiations except to say that they were concluded by the
12 ambassador,¹ MUSHOKOJI, passed by the Cabinet, approved
13 by the Emperor and after the consent and advice of
14 the Privy Council.² Needless to say, the matter was
15 given full consideration in Japan. To say that either
16 the ambassador or the military attache had any influ-
17 ence on the decision of the government would be to
18 abuse the word influence.³ We have never had any
19 apology for the Anti-Comintern Pact or the secret pact.

20 15. Re F-104. We do not agree that a com-
21 mittee was established for the purpose of checking on
22 the activities of the Comintern. There is no point
23 in making an issue of this. Soviet Russia and the
24

25 (14. 1. Ex. 36.

2. Const. Japan.

3. ITAGAKI, T. 30497.).

1 action of the Comintern were the big question marks
2 in international politics then. Everyone knew what
3 the Germans were doing.

4 16. F-105. We admit that the agreement
5 and the protocol were to remain in effect for five
6 years. We state that the pact was renewed and the
7 protocol was abrogated. It has passed its day of
8 usefulness. Germany and Russia were engaged in a war.
9 It was to be expected that Japan would not assist the
10 Soviet. It was a life and death struggle. This his-
11 tory has proved.

12 17. F-106. There is no contest about the
13 pact being directed against the Soviet Union, once it
14 was established that the Comintern was the official
15 organ of the Soviet Union. There was some doubt about
16 this in the beginning. It was Bolshevism and Commun-
17 ism, not the Russian Army which was the object of the
18 pact.^{1.} This is undisputed. That Germany, Italy and
19 Japan and other countries joined hands in this enter-
20 prise was common knowledge to the world.

21 F-107. The prosecution admits and argues
22 forcefully that the military terms of the Anti-Comintern
23 Pact were never employed. That it was only a political
24 instrument, backed by a mutual obligation pact, and
25 (17. 1. Ex. 2762, T. 27742.)

1 that the effect was nil. All that they claim for it is
2 that it was the opener for friendly relations.^{1.} Al-
3 though we admit the pact, we suggest that the proof
4 shows that there was little mutual trust and faith
5 shown in each other by the two nations, Germany and
6 Japan. The background of the relations of the nations
7 and the variance in their systems and culture and
8 national habits explains this, but it is not an issue.

9 18. F-108. All of the contentions of the
10 prosecution on the effect of the Anti-Comintern Pact
11 are erroneous. It did not keep Germany and Russia
12 apart. It more than likely brought them closer together,
13 for the same reason which prompted the Japanese to use
14 the political weight of Germany. That the pact would
15 be used in the China Affair was not contemplated.^{1.}
16 This is the product of the imagination of the prosecu-
17 tion. Ribbentrop and OSHINA both speak clearly on this
18 subject. Why the prosecution should suggest that the
19 use of the pact became the subject of a difference
20 between the nations is a puzzle.

21 We claim that there was no harm in using
22 the pact as a restraint against the Soviet Union. That
23 was the object of it primarily.^{2.}
24

25 (17. 1. #7 Par. H. 125, P. H 98)
(18. 1. Ex. 2762, T. 27742.
2. Wilson #100, P. 249.)

19. F-109. Although the prosecution has
1 tried in vain to read into the Anti-Comintern Pact
2 something which is not there, their claim that the
3 pact brought Germany and Japan closer together was
4 true only for a time. It is also true that Germany
5 used the pact only so long as it served her ends and
6 then discarded her obligations. Skip the rest of that
7 sentence.
8

9 The world knew what Hitler was doing and
10 stood by and watched him build his mighty war machine.
11 We might remind the Tribunal and also the prosecution
12 that the United States, Britain and France and other
13 countries were carrying on normal diplomatic relations
14 with Hitler while the Japanese Government was standing
15 by. Even if the ambassadors and envoys did disapprove
16 of Hitler's moves, diplomacy precluded any comment or
17 expression of disapproval.^{1.} Friendly relations existed
18 between Germany and Japan until Germany took up with
19 the Soviet Union. We have no apologies to make for
20 the Anti-Comintern Pact.
21

22 20. F-111. Although the prosecution claims
23 that German-Japanese relations in China economically
24 were improved, that is not the fact as has been dis-
25 closed by the record. The prosecution took considerable
(19. 1. Fenwick International Law, 2d Ed. P.368)

time of this Tribunal in showing that German demands
1 for preferential treatment were denied in Japan. There
2 is no doubt that such demands were made but they were
3 refused. In other places in their summation the prose-
4 cution claims that Germany was complaining about her
5 treatment at Japan's hands at the time when they claim
6 in another paragraph that Germany and Japan were cooper-
7 ating. It was difficult to reconcile the conflicting
8 claims.

9
10 21. F-112. The prosecution has resorted to
11 petty items to establish cooperation and collaboration
12 between the two nations. It is hardly worth answering.
13 Nations are urged to associate and cooperate. It is
14 natural to do so.^{1.} The prosecution relies upon a few
15 minor associations to establish their point. The more
16 they attempt, of course, the more emphatically they
17 fail to sustain their contention.

18 22. F-113. After using three paragraphs to
19 show cooperation, the author of this part of the sum-
20 mary admits that Ribbentrop was never ready to settle
21 for non-preferential treatment.

22 This covers the general discussion. We shall
23 take the prosecution's evidence now and analyze the
24 facts and digest the law, as applicable to the relations
25 (21. 1. United Nations Economic Commission.)

of Japan, Germany and Italy.

1 THE PRESIDENT: We will adjourn until half
2 past one.

3 (Whereupon, at 1200, a recess was
4 taken.)
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AFTERNOON SESSION

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3 The Tribunal met, pursuant to recess, at
4 1330.

5 MARSHAL OF THE COURT: The International
6 Military Tribunal for the Far East is now resumed.

7 THE PRESIDENT: With the permission of the
8 Tribunal, the accused KAYA will be absent from the
9 courtroom for the entire afternoon session, conferring
10 with his counsel.

11 Mr. Cunningham.

12 MR. CUNNINGHAM: I shall start on page 21, No. 3:

13 THE ANTI-COMINTERN PACT.

14 Although Japan and Germany had been conducting
15 normal diplomatic relations during the days after World
16 War I, it was a good many years before the German
17 Government was sufficiently organized so that it could
18 negotiate trade, cultural and economic agreements
19 generally with the other powers of the world. They were
20 courting France, England and Russia and the other nations
21 of Europe who were close to them and with whom they had
22 always, for centuries carried on trade and commerce.
23 The relations between Japan and Germany took form in
24 the agreement which history knows as the Anti-Comintern
25 Pact. As Ribbentrop says, "We did not want to have

1 communism spread in Europe." The Japanese did not
2 want communism to spread in Asia and did not wish to
3 allow it to interfere with the settlement of the China
4 problem.

5 The prosecution tried in vain to read into
6 the agreement something which it didn't contain. They
7 are also endeavoring to attach some responsibility
8 for its negotiation. They have failed, as is demon-
9 strated by the following analysis of their documents.

10 TERMS OF THE ANTI-COMINTERN PACT.

11 Before we attempt to analyze the legal
12 effect of the pact and interpret its meaning, in the
13 light of the then existing circumstances, let us
14 take a look at the simple terms of the pact and the
15 parts of the protocol which are in controversy. It
16 has been so long since this exhibit was introduced into
17 evidence it is but natural that its terms are not
18 fresh in our minds.

19 PACT AGAINST THE COMMUNIST INTERNATIONAL.

20 The Japanese Imperial Government and the
21 German Government, admitting that the object of the
22 Communist International (so-called Comintern), is the
23 destruction and oppression by force of existing nations
24 with all the possible ways and means, in the firm
25 belief that to overlook the interference by Communist

1 International with these nations' internal relations
2 not only jeopardizes their domestic peace and social
3 welfare, but also is a menace to world peace as a
4 whole, desirous to cooperate for the defense against
5 Communistic destruction, concluded a pact as follows:

6 Article I

7 The contracting parties agree to inform each
8 of the Communist International's activities, to discuss
9 necessary measures for defense and promise to fulfill
10 such measures through close cooperation.

11 Article 2.

12 The contracting parties will jointly invite
13 a third nation, whose internal peace is menaced by
14 destructive activities of the Communist International,
15 to take defense measures in the spirit of this pact,
16 or to participate in the pact.

17 Article 3.

18 As regards this pact, the Japanese and German
19 texts are official. It comes into force on the day of
20 signing and will be effective for five years. The
21 contracting parties will, at a proper date prior to the
22 expiration of the term, come to an understanding as to
23 the form of cooperation between the two countries
24 thereafter.
25

As an evidence thereof, the undersigned duly

1 entrusted by their respective home governments, signed
2 and sealed this pact. Two copies of this pact were
3 prepared at Berlin on the 25th November of the 11th year
4 of Showa, i. e. the 25th November, 1936.

5 (Sgd) Viscount MUSHAKOJI, Kintomo

6 Envoy Extraordinary and Ambassador

7 Plenipotentiary of Japanese Empire.

8 (Sgd) JOACHIM V. RIBBENTROP

9 Envoy Extraordinary and Ambassador

10 Plenipotentiary of Germany.

11 ACCESSORY PROTOCOL to the Pact against the
12 Communist International.

13 On the occasion of signing today of the Pact
14 against the Communist International, the undersigned
15 Envoys Plenipotentiary agreed as follows:

16 (a) The authorities of the two contracting
17 parties will closely cooperate with each other as
18 regards the exchange of information relating to the
19 activities of the Communist International and the
20 enlightenment and defense measures against the Communist
21 International.
22

23 (b) The authorities of the two contracting
24 parties will take drastic steps, within the bounds of
25 the existing law, in dealing with persons who, at home
or abroad, directly or indirectly, are serving with

1 the Communist International or foster its destructive
2 activity.

3 (c) In order to facilitate the cooperation
4 of the authorities of the two contracting parties, as
5 provided in forementioned (a), a standing commission
6 will be established. Other defense measures necessary
7 for checking the destructive activities of the Commu-
8 nist International will be studied and discussed by
9 the said commission.

10 Berlin, the 25th November of the 11th year of
11 Showa, i. e., the 25th November, 1936.

12 (Signed) Viscount MUSHAKOJI, Kintomo
13 Envoy Extraordinary and Ambassador
14 Plenipotentiary of Japanese Empire.

15 (Signed) JOACHIM V. RIBBENTROP
16 Envoy Extraordinary and Ambassador
17 Plenipotentiary of Germany.

18 (1) The prosecution asserts that the Anti-
19 Comintern Pact and the accessory Secret Protocol were
20 directed against Russia, and that their purpose was to
21 check and restrain Russia in collaboration with Germany
22 until the Japanese aggression in China obtained its
23 objective. They failed to present any evidence to
24 support this assertion.
25

(2) Contrary to the prosecution's theory,

1 all of the evidence clearly shows that both the pact
2 and protocol were purely of a defensive nature against
3 growth of the menace of communism, and its spread, and
4 the growing armed pressure being exerted by the Soviet
5 Union.

6 I will skip down to the words:

7 These events affected the most vital interests
8 of all nations, especially Japan and Germany. The
9 7th Congress of the Comintern held in Moscow in 1935,
10 adopted a resolution designating Japan and Germany as
11 its primary enemies. (Ex. 484, T. 22486).

12 Of course it cannot be denied that an inseparable
13 relation existed between Soviet Russia and the
14 Comintern. The Japanese Government never lost sight
15 of this fact, as indicated by HIROTA in the Privy
16 Council Session (Exhibit 484, p. 22480). Indeed it was
17 in view of the sinister nature of this relationship
18 between the two organizations that the Japanese Govern-
19 ment considered some international agreement against
20 the Comintern necessary in order to combat the menace
21 of its destructive activities.

22
23 (3) As to the Secret Protocol attached to the
24 Anti-Comintern Pact, its content was also purely de-
25 fensive, having in view only the contingency when one

1 of the participants was unprovokedly attacked or
2 menaced by Soviet Russia. It did, however, not
3 stipulate a mutual assistance between the parties for
4 that event, but only an obligation not to take any such
5 measures as to relieve the situation of Soviet Russia.
6 HIROTA and ARITA explained in the Privy Council how
7 the Soviet Russia strengthened her armament by the
8 Five-Year Plan, and how Japan was feeling the heavy
9 pressure put on her by the vastly increased Soviet
10 Army in the Far East (Exhibit 484, pp. 22480, 22483).

11 HIROTA explained that the object of the pact
12 was simply to make it an instrument for preparing for
13 checking the armed pressure of the Soviet Union and
14 Bolshevistic activities (Exhibit 484, p. 22482). It
15 is indeed a very far-fetched assertion on the part
16 of the prosecution to claim that the Anti-Comintern
17 Pact was converted into a military alliance by this
18 secret agreement. We claim that nothing of a nature of
19 military alliance is included in these agreements.

20 (4) Further statements of HIROTA and ARITA
21 in the Privy Council proved the defensive and peaceful
22 character of the agreements, leaving no room for any
23 doubt in this respect.

24 Both declared that Japan should of course
25 refrain from taking any positive measures which might

1 aggravate relations with the Soviet Union, and would
2 always do its utmost to maintain and promote amicable
3 relations with Britain (Ex. 484, p. 22482).

4 The assertion of the prosecution that the
5 agreements were directed against all democratic
6 countries of the world is clearly unfounded. Although
7 the object of the secret agreement was the Soviet Union,
8 the defense asserts that it does not constitute a
9 violation of any international law whatsoever to
10 conclude an agreement directed to a specific country,
11 so long as that agreement is defensive and peaceful in
12 nature.

13 (5) The object of the Anti-Comintern Pact and
14 the Protocol were thus clearly limited in scope. It
15 was quite natural that some accessory political results
16 followed this rapprochement between Japan and Germany.
17 For Japan, which was suffering from international
18 isolation, this pact meant an improvement of her
19 position in international politics. This was, of
20 course, not confined to Japan's position vis-a-vis
21 China. From the fact that nobody in the Japanese
22 Government anticipated the outbreak of the China
23 Incident at the time of the conclusion of the Anti-
24 Comintern Pact, we claim that the prosecution's
25 inference that the Anti-Comintern Pact was for the

purpose of furthering Japan's policy in China is
groundless.

Exhibit No. 2762, Affidavit of Ribbentrop,
reads as follows:

"I. Anti-Comintern Pact.

"The Anti-Comintern was primarily an ideological pact," Ribbentrop says under quote. "We Germans did not want to let communism spread. Of course, there was also a political weight against Soviet Russia that was more or less the background of the pact. It is not true that this pact was directed against the democratic countries of the world. On the contrary, I tried hard after the conclusion of the pact to get Great Britain to join it, but was unsuccessful. I never had an impression that Japan might use the pact in her policy toward China or the South Sea area." . . .

(6) The prosecution attaches great importance to the assertion that the Anti-Comintern Pact was the first step for joint aggressive action taken by Japan and Germany. They failed to produce any convincing evidence on this point. A mere fact that the two countries of Japan and Germany at certain intervals concluded agreements or were engaged in negotiations can certainly not be taken as proof that the relations between the two countries were continuous, having

certain definite objects during the whole period.

1 As applies to all international relations, the relation
2 between Japan and Germany was subject to the changes in
3 the world situation. Even after 1936, they completely
4 cooled off. The treaties they concluded, or negotia-
5 tions they attempted were for different purposes each
6 time. The defense thinks that their proof has made it
7 abundantly clear that there was continuity in the
8 Japanese-German relations. This will be further
9 explained in the following pages.
10

11 4. RELATIONS BETWEEN JAPAN AND GERMANY AFTER
12 THE CONCLUSION OF THE ANTI-COMINTERN PACT.

13 (1) The history of Japanese-German relations
14 in China was always that of discord, not that of
15 collaboration. Even after the conclusion of the Anti-
16 Comintern Pact, Germany continued to supply arms to
17 China and kept military advisors with the Chinese
18 Government. Japan considered it an unfriendly act on
19 the part of Germany, in view of the fact that actual
20 hostilities at that time were going on between Japan
21 and China on a large scale, but this situation was
22 not improved until the end of July 1938 (Ex. 594, T.
23 6601). It is clear also from the prosecution's evidence
24 that Germany was opposed to the China Incident at its
25 outset (Ex. 486-A, T. 5980-1). It is admitted that the

1 policy of Germany subsequently changed. But this
2 occurred out of the necessity to adjust her policy
3 to the actual situation then prevailing in China,
4 especially due to the perspective that the China
5 Incident would be prolonged, which was contrary to
6 expectations. The report of Ambassador Dirksen (Ex.
7 486-H, T. 6002-13) shows this clearly. We assert that
8 no evidence was ever produced that Japan and Germany
9 collaborated after the conclusion of the Anti-Comintern
10 Pact in pursuing their respective policies in China.
11 They followed independent courses.

12 (2) Even after the change of the Germany
13 policy in China, the economic question was a continuous
14 source of friction between Japan and Germany. The
15 question of preferential treatment was never settled
16 between the two nations. The interpretation given by
17 the prosecution to exhibit 596 (T. 6623-4) is obviously
18 wrong, as this document shows clearly the refusal by
19 Japan to give Germany preferential treatment in China.
20 Moreover, German protests to Japan with respect to the
21 economic restrictions put on her trade in China never
22 ceased until the end of World War II. The defense con-
23 tends that these facts show further the lack of Japanese-
24 German collaboration in China.
25

(3) As to the prosecution's attempt to

attach political implication to the Japanese-German
1 cultural agreement, it is pointed out that to agree on
2 cultural matters cannot at any time be considered as
3 offensive to international law. ARITA denied clearly
4 any such political implication of the agreement
5 (Ex. 589, T. 6576).

6 EXPANSION AND RENEWAL OF THE ANTI-COMINTERN
7 PACT.

8 (1) The Anti-Comintern Pact provided in its
9 text that other countries should be invited to join
10 the Pact. On the basis of this provision, Italy,
11 Manchukuo, Hungary and Spain joined the Pact up to
12 March 1939. These adherences were carried out solely
13 from the standpoint of the defense against communism.
14 In the case of Italy's adherence, any political impli-
15 cations which might affect Japan's relations with
16 Great Britain were carefully considered and avoided,
17 as shown by the telegrams from Ambassador Sugimura to
18 Foreign Ministers ARITA and SATO (Exhibits 2615, 2616,
19 2618; pp. 22500, 22,502, 22524). The secret agreement
20 attached to the Anti-Comintern Pact was never communi-
21 cated to any of the joining countries, not even to
22 Italy.
23

24 (2) It is to be noted that the invitations
25 were also extended by Germany to Great Britain and by

1 Japan to Holland. While those two powers declined
2 to join, it shows that the Pact was considered uni-
3 versal in nature and not limited to any special group
4 of powers.

5 (3) The content of the Anti-Comintern Pact
6 was, contrary to the prosecution's assertion, never
7 changed or strengthened. The renewal of the Pact
8 in November 1941 was done as a routine matter of
9 ordinary diplomatic business. The secret agreement
10 was abrogated. (Ex. 2694, T. 23563).

11 STRENGTHENING OF THE ANTI-COMINTERN PACT.

12 (1) In 1938 and 1939, negotiations took
13 place between Japan and Germany, at the instance of
14 Germany, for the strengthening of the Anti-Comintern
15 Pact. These negotiations failed completely, and no
16 results were obtained. The prosecution seems to
17 consider them as a forerunner to the Tripartite Pact,
18 which was concluded in September 1940, by including
19 these negotiations in the chapter of "Tripartite Pact."
20 The defense contends that these two items are completely
21 different, and no direct connection existed between the
22 two.
23
24
25

2) The length and the complexity of the negotiations makes it rather difficult to grasp the whole matter correctly. To attempt to outline during the trial the minutes of 70 Five Ministers Conferences which considered this question would involve a separate trial. But the defense contends that the most important criterion by which to determine the nature of the negotiations is whether they were for an aggressive purpose, directed to the entire world, as claimed by the prosecution, or whether they were for defensive purpose, which is the fact? There has been no greater waste of time in this whole trial than the unlimited consideration given these abortive proceedings.

3) In this respect the text of the treaty, in so far as agreed upon by the parties, is the most important evidence. Such a text, tendered by the defense in evidence, stipulates that the duty of mutual assistance would become effective only when one of the signatories was attacked or menaced by a third power, thus showing the defensive nature of the proposed agreement (exh. 2619). Ambassador OSHIMA stated (exh. 3508, T. 34,012-13), as corroborated by witnesses USAMI (exh. 3494, T. 33,733) and KAWABE (exh. 3495, T. 33,768), that the purpose of the Japanese Government in considering these negotiations was to facilitate the

1 settlement of the China Incident, and to improve the
2 defense against the increasing armed menace of the
3 Soviet Union. It was the intention of the Japanese
4 leaders to use this agreement, if concluded, for dip-
5 lomatic weight, and not for any aggressive purpose.

6 4) Evidence tendered by the prosecution
7 shows that Japan was very cautious from the outset
8 as to the content of the proposed agreement. The
9 obligation of military aid was not to be instantaneous
10 and unconditional, as suggested by the prosecution.
11 In order to nullify the danger of becoming involved
12 in a purely European conflict against Japan's will,
13 there was to be a conference before Japan entered into
14 any conflict or became obligated to provide military
15 aid. The chief object of the agreement was the Soviet
16 Union. Care was taken to avoid giving the impression
17 that England and the United States were the principal
18 objectives (exh. 3515, T. 34,119).

19 5) The prosecution asserts that Ambassador
20 OSHIMA acted from the outset in contravention of
21 instructions and made commitments to the German side
22 in excess of the policy of the Japanese Government.
23 This matter will be fully discussed in the individual
24 summation for accused OSHIMA. It is only pointed out
25 here that exhibits 3514 and 3515 (T. 34,116-17) were

first tendered during the cross-examination of accused OSHIMA, and that he stated that he could not remember the content of the first instructions, although he was sure to have communicated them fully to the Germans. No evidence was tendered that accused OSHIMA acted in contravention of any part of these instructions. On the contrary, the statement made by the ambassador that the first instructions received from Tokyo indicated the Soviet Union as the primary, and other powers as the secondary objectives (ex. 3508, T. 33,998-9) is fully corroborated by the evidence of the prosecution. (Exh. 3514 and 3515, T. 34,116-7.)

6) The assertions of the prosecution that OSHIMA, disregarding the instructions of the home government, conspired with Ribbentrop and tried to lead the Japanese Government in the direction desired by him, or that some members of the Five Ministers Conference exerted their influence, in combination with OSHIMA, in order to overcome the more moderate view of their colleagues, will be answered in individual summations. It is pointed out here only that the difference of opinions were of a technical nature as to the mode and extent of military assistance, to be given to one of the signatories by other contracting powers, in case the former was attacked by nations other than

the Soviet Union. No aggressive intention was revealed
1 by any of the Japanese leaders during the whole nego-
2 tiations. Near the close the differences resolved
3 themselves to the interpretation of one article,
4 (Stahmer's affidavit).

5 5. GERMAN-RUSSIAN NON-AGGRESSION TREATY.

6 1) The negotiations for the German-Russian
7 Non-Aggression Treaty (exh. 2725, T. 24,187), which
8 began as early as spring of 1939 (exh. 2722, T. 24,178;
9 exh. 2724, T. 24,185), were kept secret from Japan.

10 This is acknowledged by the Tribunal when it said:

11 * * * * "Moreover, as Mr. Cunningham pointed
12 out, the Japanese were wholly unaware of the commu-
13 nications passing between Russia and the other coun-
14 tries, more particularly Germany, as contained in
15 those documents." * * * * (T. 38,891.)

16 The German Foreign Office denied the existence
17 of such negotiations upon inquiry from the Japanese
18 Embassy in Berlin (exh. 2723, T. 24,182).

19 The conclusion of the German-Russian Non-
20 Aggression Pact, which was a clear violation of the
21 Secret Protocol of the Anti-Comintern Pact, came as
22 a complete surprise to Japan. This volte-face and
23 bad faith on the part of Germany caused extreme anger
24 and indignation in Japan. The Japanese Government
25

1 protested to Germany at once in Tokyo and Berlin, and
2 declared the severance of the negotiations for the
3 strengthening of the Anti-Comintern Pact (exh. 486-L,
4 T. 6122-3). At the same time the Japanese Ambassador
5 in Washington communicated to the United States
6 Secretary of State the change of the attitude of the
7 Japanese Government, and stated that Japan would adopt
8 a new foreign policy (exh. 2727, T. 24,197).

9 2) In Japan internally and politically the
10 German-Russian Treaty caused the downfall of the
11 HIRANUMA Cabinet (exh. 2728, T. 24,202-4). The succeed-
12 ing cabinet ABE was formed with the explicit instruction
13 of the Emperor that the diplomatic policy should
14 follow the line of cooperation with Britain and the
15 United States (exh. 2272, T. 16,241). Thus the com-
16 plete reorientation of the Japanese foreign policy was
17 clearly indicated.

18 As to the indignation caused in the Japanese
19 army circle, which was considered as pro-German in
20 some respects, the report of the Italian military
21 attache in Tokyo, as referred to in the telegram from
22 Mackensen in Rome to Berlin (exh. 2726, T. 24,190-2),
23 is the best illustration. Even the rupture of dip-
24 lomatic relations was feared, in some circles.

25 3) It is the contention of the defense that

1 this German-Russian Non-Aggression Treaty marked the
2 complete cooling-off of the Japanese-German relations.
3 Not only were the pending negotiations cut off, but
4 the interstate relations were jeopardized. This result
5 followed regardless of the German efforts to appease
6 Japan, on which subject some evidence was tendered by
7 the prosecution. This expressed nothing but a purely
8 one-sided view of Germany, however.

9 4) The ABE Cabinet appointed Admiral NOMURA,
10 who became later the Japanese Ambassador to the United
11 States, as Foreign Minister, and endeavored, in line
12 of reorientation of the Japanese foreign policy, to
13 improve above all the diplomatic and commercial
14 relations with the United States. The statement on
15 non-involvement in the European war (exh. 2729,
16 T. 24,206) issued on 4 September 1939, shortly after
17 the formation of the cabinet, was the first clear
18 indication of the new policy, adopted under the
19 reorientation program.

20 Foreign Minister NOMURA took up the conver-
21 sations with Ambassador Grew in order to prevent the
22 Japanese-American commercial relations from falling
23 into the treaty-less status; such a condition was feared
24 as a result of the notification by the United States
25 to Japan of the abolition of the Japanese-American

commercial treaty (exh. 994, T. 9,602). As a major
1 concession on the Japanese side to the demands of the
2 United States, Admiral NOMURA offered to
3 reopen the lower reaches of the Yangtze River for navigation. He stated that if by making this concession,
4 no effective results were seen from the standpoint of
5 improving international relations, the government
6 would be attacked by public opinion; the result would
7 be that relations between Japan and the United States,
8 instead of improving would tend towards the opposite
9 direction and so proceed to a point which it would be
10 difficult to estimate. Foreign Minister NOMURA
11 appealed to the United States Government to enter into
12 negotiations for a new commercial treaty (exh. 2730,
13 T. 24,209-12). The United States declined (exh. 2731,
14 T. 24,213-15). Even the Japanese proposal for concluding
15 a modus vivendi was rejected (exh. 2732, T. 24,216-19).
16 The strong speech (straight from the horse's mouth)
17 made by Ambassador Grew on 19 October 1939 upon his
18 return from the vacation in the United States,
19 denouncing every feature of the Japanese policy in
20 China (exh. 2736, T. 24,313-26), incensed the public
21 opinion in Japan and increased the difficulties of the
22 government. Such a result can be seen from the reports
23 sent by the German and American Ambassadors to their
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home governments on the reaction of the Japanese public
to the speech (exh. 2737, T. 24,326-7; exh. 2738,
T. 24,328-31). The failure of the NOMURA endeavors
for improving the relations with the United States
brought about the downfall of ABE Cabinet. The YONAI
Cabinet succeeded the ABE; its approved foreign policy
was directed to renewing the efforts for a rapproche-
ment with the Anglo-Saxon powers.

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5) During the tenure of office of these two cabinets, the relations with Germany remained extremely cool. Eugen Ott complained to MATSUOKA on 1 August 1940 that up to that time he was disregarded and treated almost with contempt by the Japanese Foreign Office, (Ex. 545, T. 24,231-2). Absolutely no continuity existed in the Japanese-German relations.

6) The success of the German army in Europe, especially the occupation of Holland and the surrender of France, created a new situation also in East Asia. Japan naturally feared the emergence of victorious Germany in East Asia as successor to France and Holland. At the same time, among the people of Japan, suffering under the pressure of the China Incident and the feeling of international isolation, which was aggravated after the failure of the rapprochement with the Anglo-Saxon powers, strong opinion urging a closer relation with Germany was formented. These circumstances compelled the Government to reconsider the relations with Germany, in order at least to sound out the intention of that country, in respect to its interests in East Asia. The evidence tendered by the prosecution as to the Japanese-German contacts concerning Netherlands East Indies and French Indo-China (Ex. 517, T. 6156; Ex. 518, T. 6159; Ex. 519, T. 6161; Ex. 520, T. 6162) shows nothing but

1 this normal diplomatic maneuver. Germany was reluctant
2 to acknowledge Japan's position (Ex. 521, T. 6166).
3 Concerning the conversation between SATO and KURUSU
4 and Ribbentrop and Stehmer, it is submitted that SATO
5 went originally to Italy on an official mission, and
6 visited Germany only unofficially (Ex. 2733, T. 24,228-9,
7 T. 28,960). The conversation was confined to mutual
8 sounding of the other's intentions, the Japanese side
9 showing considerable mistrust vis-a-vis Germany. This
10 is clearly shown by the subsequent exchange of telegrams
11 between KURUSU, SATO and ARITA, (Ex. 525, T. 6186;
12 Ex. 526, T. 6189; Ex. 1020, T. 9694, T. 24,230). This
13 can certainly not be taken as an evidence for Japanese-
14 German collaboration.

15 7) The joint conference of the Japanese army,
16 navy and Foreign office in July 1940 (Ex. 527, T. 6191-
17 6206; Ex. 528, T. 6214-30) covered only a routine study
18 of the international situation. Their meetings were
19 often carried out in the Japanese Ministries of that
20 time. No evidence was offered that this study influenced
21 the foreign policy of Japan to any great extent. ARITA,
22 then Foreign Minister, stated in his cross-examination
23 that he instructed his subordinates at that time to
24 conduct some kind of study to bring about closer
25 relations between Germany and Japan insofar as it would

not aggravate Japan's important interests. He never

received any reports before the cabinet resigned

(T. 28,966, 28,967-8).

8) The cause of the resignation of the YONAI Cabinet will be fully discussed in the individual summations. It is pointed out here that the prosecution's assertion that the cabinet fell in order to facilitate the conclusion of the Tripartite Pact is without foundation.

6. THE TRIPARTITE PACT.

1) The newly born KONOYE Cabinet in the summer of 1940 was not at all sure of the attitude of Germany. Foreign Minister MATSUOKA took great pains to sound out the German attitude through Ambassador Ott in Tokyo and KURUSU in Berlin (Ex. 545, T. 6288-92; Ex. 542, T. 6278-81). As a result thereof, Heinrich Stahmer was dispatched by Ribbentrop to Tokyo, in order to find out the true intention of Japan (Ex. 2744, T. 24,404-5).

2) On hearing the report of the dispatch of Stahmer from KURUSU in Berlin, the Japanese Government decided in the meantime on a policy vis-a-vis Germany to meet all eventualities. This is the recorded decision of the Four Ministers Conference of 4 September 1940 (Ex. 541, T. 6307-21). While this decision

1 included many important matters of far-reaching
2 consequence, it is submitted that nothing in it
3 indicates any aggressive policy of Japan. This
4 decision of 4 September was never communicated to
5 Germany, and could not be considered as the basis of
6 any Japanese-German agreement. Admittedly, the
7 possibility of war breaking out was carefully considered,
8 but under the international circumstances then prevailing,
9 it was only natural for every great power to keep close
10 watch and not to lose sight of such a possibility
11 in studying the formation of future diplomatic policy.

12 3) At the conference after the arrival of
13 Envoy Stahmer in September 1940, negotiations were
14 conducted by Foreign Minister MATSUOKA alone on the
15 Japanese side (Ex. 3144, T. 27,984). The record of
16 conversations between MATSUOKA, Stahmer and Ott on
17 9 and 10 September 1940, tendered in evidence by the
18 prosecution (Ex. 549, T. 6323) is an important document
19 showing the understanding between the parties. This
20 discussion formed the basis of the Tripartite Pact.
21 Stahmer told MATSUOKA in this conversation, assuring
22 that his words can be taken as coming directly from
23 Ribbentrop, that: (1) Germany did not want the present
24 conflict to develop into a World War, and wished to
25 bring it to termination as quickly as possible;

(2) Germany did not look for Japan's military assistance at this juncture in connection with her war with England;

(3) What Germany wanted of Japan was to have Japan play the role of restraining and preventing the U.S. from entering the war, by all means; (4) A strong and determined attitude, unequivocal and unmistakable, on the part of the three nations, Japan, Germany and Italy, and the knowledge of it by the U.S. and the world at large at this juncture, that alone could be of a powerful and effective deterrent on the United States;

(5) Germany was prepared to act the part of intermediate broker on the question of rapprochement between Japan and Soviet Russia; (6) Germany would make use of every means in her power to prevent the clashing between the United States and Japan, and even to improve the relations between the two, if it could be considered humanly possible.

4) The attitude of Germany coincided with the Japanese policy at that time, and on the basis of this understanding the Tripartite Pact between Germany, Italy and Japan was signed in Berlin on 27 September 1940. Prince KONOYE wrote in his memoir that the purpose of the Tripartite Pact was first to prevent the United States from participating in the war in Europe, and secondly, to secure friendly relations

1 between Japan and Soviet Russia. He thought that a
2 coalition between Japan, Germany and Russia alone
3 would enable Japan to make her voice weightier
4 against the Anglo-American combination and thus facilitate
5 the settlement of the Sino-Japanese conflict. Even
6 KONOYE, who was an ardent supporter of Japanese-American
7 understandings, felt at that time that every normal
8 approach to the American Government had been closed,
9 and that in order to force America to give up the
10 idea of coercing Japan, the only possible way left
11 open to Japan was to take sides with Germany and Italy,
12 and through Germany with the U.S.S.R. as well. Only
13 when such an equilibrium of power had been attained
14 against the Anglo-American combination, would rapprochement
15 with America become possible. The ultimate aim of
16 Japan's attempt to combine with Germany and Russia
17 lay also in the adjustment of Japan's relations with
18 America, and, as a result of such adjustment, the
19 settlement of the long conflict with China (Ex. 2735-A,
20 T. 24,294; 24,297-9) was sought. MATSUOKA explained
21 at the Imperial Conference preceding to the conclusion
22 of the pact that in view of the coercive attitude of
23 the United States, there was nothing left for Japan
24 to do but to stand firm. Japan must cope with America
25 by firmly joining hands with as many countries as

possible, to back up her firm attitude, and by making
1 the fact known at home and abroad as quickly and as
2 clearly as possible. MATSUOKA will always be careful
3 not to overlook an opportunity to improve relations
4 with America, (Ex. 550, T. 6341-3). Witness SAITO,
5 testified that MATSUOKA told him this. Since the
6 American policy was so high-minded, Japan cannot
7 oppose America single-handed with her own power, Japan
8 must shake hands with some other strong powers: MATSUOKA
9 told him further that once the Tripartite Pact was
10 concluded, he (MATSUOKA) must pour all his wits and
11 abilities into the establishment of world peace (Ex.
12 3143, T. 27,969, 27,972-3). These statements, corrobor-
13 ating each other, show the peaceful purpose of the
14 Tripartite Pact.
15

16 Article V reads as follows:

17 "Japan, Germany and Italy shall confirm that
18 the above stated articles of this alliance have no
19 effect whatsoever to the present existing political
20 relation between each or any one of the signatories
21 with Soviet Union." (Ex. 43, T. 6391).
22

23 5) Another important point in determining
24 the character of the Tripartite Pact is the fact that
25 this Pact was completely different from the proposed
pact of 1938 and 1939, negotiations for which failed

1 upon the conclusion of the German-Russian Non-Aggression
2 Treaty. Prince KONOYE wrote in his memoir that there
3 was a fundamental difference in nature between the
4 two plans, inasmuch as the objectives were different
5 (Ex. 2735-A, T. 24,291). MATSUOKA explained at the
6 Imperial Conference in September 1940 that the
7 fundamental principle of the recent negotiations with
8 Germany was entirely different from that of HIRANUMA
9 Cabinet days (Ex. 550, T. 6341). Moreover, witness
10 SAITO stated that MATSUOKA did not even look into the
11 records of the previous Japanese-German negotiations
12 (Ex. 3143, T. 27,979-80). The prosecution's contention
13 that the Tripartite Pact was the continuance of the
14 abortive negotiations of 1938 and 1939 is clearly a
15 mistake, is contradicted by the record.

16 6) The prosecution asserts that the preamble
17 and the provisions of Articles I and II of the
18 Tripartite Pact indicate the intention of the three
19 countries to divide and dominate the world.
20

21 Regardless of the question whether it is of
22 itself a crime in international law for any power to
23 try to dominate a part of the world, the Imperial rescript
24 issued on the day of the conclusion of the Pact (Ex. 554,
25 T. 6394), the contemporary statements of KONOYE (Ex.
2734, T. 24,276; Ex. 2741, T. 24,370) and MATSUOKA

(Ex. 2740, T. 24,357), as well as speeches by the
1 subsequent Foreign Minister TOYODA and TOGO (Ex. 2742,
2 T. 24,374; Ex. 2743, T. 24,375) show no sign that such
3 an idea was entertained by Japan. At least so far as
4 Japan was concerned, the preamble of the Tripartite
5 Pact embodies the traditional ideal of peace entertained
6 by Japan throughout her long history. As to this
7 Japanese ideal of peace, explanation will be offered
8 in other divisions of the defense.
9

10 Article III of the Pact provides that, if
11 and when anyone of the signatories be attacked by
12 any third power not presently engaged in the present
13 European war or the China Incident, the other two
14 shall aid her in any way. Thus its purport was clearly
15 defensive. It was further agreed upon that the question
16 of whether or not a contracting party has been attacked
17 within the meaning of Article III of the Pact would
18 be determined upon consultation among the three con-
19 tracting powers (Ex. 555, B, T. 6398) indicating that
20 one power would not be bound by the finding of other
21 powers. Each power could make a decision quite
22 independently of the others. Japan succeeded by this
23 agreement to prevent being drawn automatically into
24 the war, for instance, by the outbreak of a German-
25 American war, thus reserving her independence of action.

1 It is, moreover, pointed out that same provisions as
2 this article were also included in the British-Polish
3 and British-French-Turkish Treaties, both concluded
4 in 1939 prior to the Tripartite Pact.

5 7. JAPANESE-GERMAN RELATIONS AFTER THE
6 CONCLUSION OF TRIPARTITE PACT

7 1) The Tripartite Pact was concluded on the
8 basis of the understanding that it was an instrument
9 of politics. Soon after the pact had come into life,
10 important changes in the world situation took place.
11 The close collaboration between Japan, Germany and
12 Italy as envisaged by the Pact was made impossible,
13 almost from the outset. That the Pact failed to fulfil
14 the basic minimum requirements to be useful for any
15 political purpose of Japan was soon recognized. Of
16 course, there were many diplomatic discussions on
17 each side. But even during the war, which the three
18 countries fought as allies, there was no close collabor-
19 ation. This was more true at the time before the out-
20 break of the Pacific war. We assert that the Tripartite
21 Pact was not evidence of a criminal conspiracy between
22 Japan, Germany and Italy, but state that it did not
23 contribute at all toward a closer collaboration between
24 the three countries.
25

2) The first question put by Germany to Japan

1 soon after the conclusion of the Pact was the
2 Singapore question. Germany began to try, contrary
3 to the terms of the Pact and the understanding which
4 preceded the conclusion of the Pact, to induce Japan
5 to an attack on Singapore. The defense admits that
6 Germany used every means to accomplish this purpose,
7 but asserts that nowhere in any of the prosecution's
8 documents can any evidence be found that the Japanese
9 Government or any individual of Japan did ever consent
10 to the German urgings. The study of Ott about the
11 possibilities of a Japanese attack on Singapore (Ex.
12 562, T. 6430-4) was carried out solely on Ott's initiat-
13 ive, without any participation from the Japanese side.
14 (Ex. 3646, T. 28,019).

15 Witness Kretschmer, who actually conducted
16 the study as the Military Attache, testified in his
17 cross-examination that the study was made on Ott's wish
18 and for purely internal purposes, that the Germans at
19 that time, as often afterwards were kept in ignorance
20 about the Japanese intentions.
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1 He stated further that he was quite sure that
2 the Japanese did not receive any information about this
3 strategical study via the German Embassy. (Ex. 2751,
4 T. 24624-5.) Ott stated in his affidavit that he made
5 the survey on the possibilities of a Japanese attack on
6 Singapore in early 1941, through his own initiative.
7 (Ex. 3146, T. 28019-20.) In the conversations between
8 OSHIMA and Ribbentrop and Weizsacker in February, 1941,
9 the Singapore question was mentioned. But the matter was
10 brought out by the Germans, and OSHIMA did not give any
11 commitments except usual diplomatic answers. (Ex. 570,
12 T. 6457; Ex. 571, T. 6459-67.) The attitude of OSHIMA
13 will be discussed in the individual summation. The
14 directive No. 24 of the Fuehrer (Ex. 573, T. 6469-73), or
15 the instruction of Ribbentrop to Ott (Ex. 572, T. 6468)
16 to try to induce Japan to an attack on Singapore are
17 purely German documents, completely unknown to the Japa-
18 nese side. During the conversations of MATSUOKA and
19 Hitler (Ex. 577, T. 6485; Ex. 582, T. 6538), Ribbentrop
20 (Ex. 578, T. 6499; Ex. 579, T. 6513; Ex. 580, T. 6522;
21 Ex. 583, T. 6546) and Goering (Ex. 581, T. 6534) in
22 March and April, 1941, in Berlin, the Singapore question
23 was again raised by the German side.
24
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1 Although we firmly contend that the so-called
2 records of conversations prepared by the German side can-
3 not be solely relied upon for the purpose of finding out
4 what was really talked about there, even these German
5 documents show that MATSUOKA mostly talked for himself;
6 expressed his personal opinions, and did not make any
7 commitments to the Germans. He asked the Germans that
8 the matter discussed be kept secret from the Japanese
9 Government (Ex. 582, T. 6545.) In view of the attitude
10 of MATSUOKA it is quite clear, regardless of the question
11 whether MATSUOKA was in good faith or not, that these
12 conversations cannot be taken as evidence of Japanese-
13 German agreement. In the International Court of Nuern-
14 berg evidence was tendered by the prosecution that Hitler
15 did not tell the truth to MATSUOKA in order to camouflage
16 his decision to make a surprise attack on Russia (Ex.
17 2750-4, T. 24613-4.) As to the attitude of MATSUOKA,
18 witness NAGAI testified that prior to MATSUOKA's depart-
19 ure from Tokyo in February, 1941, the Chief of the Army
20 General Staff made a request to MATSUOKA not to make any
21 operational or strategical commitment to Germany, and he
22 (NAGAI) was specifically reminded by the Chief of the
23 General Staff to assist MATSUOKA concerning this point.
24 MATSUOKA promised to NAGAI during the trip that no com-
25 mitment would be given to Germany. In Berlin, NAGAI

1 heard from MATSUOKA, although informally, that when the
2 Singapore question was raised during the conversation
3 with Hitler and Ribbentrop, MATSUOKA did not commit any-
4 thing to the Germans (Ex. 2747, T. 24580-1.) Witness
5 SAITO also stated in corroboration of NAGAI's testimony
6 that MATSUOKA after his return to Tokyo told SAITO that
7 he (MATSUOKA) did not make any promise with reference to
8 an attack on Singapore, nor did he say anything to com-
9 mit himself (Ex. 3143, T. 27971-2.) MATSUOKA requested
10 through Ott the German Foreign Office that the records
11 of his conversations in Berlin be handed to him (Ex.
12 2749, T. 24585) but the German side refused on the ground
13 that no records were made by the German Foreign Office
14 as a matter of principle and Minister Schmidt took note
15 only of catch words for the purpose of translation (Ex.
16 2748, T. 24586.) The prosecution here and the prosecution
17 at Nuernberg have adopted divergent views on the whole
18 Singapore question.

19 3) The fact is that there was no plan of an
20 attack on Singapore prepared by the Japanese military in
21 the spring of 1941. Witness KONDO, Nobutake, who was
22 the deputy Chief of the Naval General Staff from October,
23 1939, until September, 1941, testified that the Japanese
24 Navy had no concrete plans or preparations for an attack
25 on Singapore in February or March, 1941 (T. 26677-82.)

1 Witness TANAKA, Shinichi, who was the Chief of the First
2 Section (Operational Planning) in the General Staff
3 Office from October, 1940, to December, 1942, testified
4 that in the peacetime operational plan for 1941, plans
5 for operations in the Southern area were left out of
6 consideration, and even the study prerequisite for the
7 defense of that area was left incomplete or untouched.
8 (Ex. 3027, T. 26996.) This evidence should suffice that
9 there was, and there could have been, no agreement be-
10 tween Japan and Germany as to an attack on Singapore in
11 1941.

12 This whole question as Ribbentrop said was
13 created for propaganda purposes, to get Japan involved
14 in the war against England.

15 4) The second point of issue between Japan and
16 Germany was the question of Soviet Russia. As shown
17 above, one of the purposes of the Tripartite Pact was
18 the improvement of relations with the Soviet Union, and
19 Germany promised to act as a go-between for bringing about
20 a better understanding between Japan and Soviet Russia.
21 Indeed Ribbentrop proposed to Russia in November, 1940,
22 a four powers pact including Japan, Germany, Italy, and
23 Russia, as shown by a memorandum sent to the Japanese
24 Government (Ex. 2735-A, T. 24300-1.) But this proposal
25 failed, according to the German views. When MATSUOKA

1 arrived in Berlin in March, 1941, he found there a
2 totally different situation awaiting him. Both Hitler
3 and Ribbentrop indicated that their relations with
4 Soviet Russia were deteriorating, and Germany was taking
5 precautionary military measures for all eventualities.
6 When MATSUOKA brought out the question of concluding a
7 Japanese-Russian Non-Aggression Treaty, Ribbentrop tried
8 to discourage him, although he did not oppose the idea.
9 In the face of such an attitude of Germany, MATSUOKA
10 concluded the neutrality treaty with the Soviet Union
11 pursuant to the pre-determined Japanese foreign policy.
12 This was an unpleasant surprise to Ribbentrop who ex-
13 pressed his antipathy to this Japanese policy (Ex. 2735-A,
14 T. 24303.) Thus was complete reversal of the Germany-
15 Soviet policy subsequent to the conclusion of the Pact
16 (Three Powers), any collaboration between Japan and
17 Germany was impossible after that.

18
19 After April, 1941, the question of the German-
20 Russian war became acute. Although Germany did not give
21 Japan any definite notice of her decision to go to war
22 against Russia, the Government of Japan, roused by
23 alarming telegrams received from OSHIMA, felt great con-
24 cern about the trend of events. A clash between Germany
25 and Russia would nullify one of the main purposes of the
Tripartite Pact. MATSUOKA on 28 May 1941 sent a message

1 on behalf of the Government to Ribbentrop to the effect
2 that, in view of the external as well as internal situ-
3 ation in Japan, he (MATSUOKA) wished the German Govern-
4 ment to avoid any armed conflict with Russia and to use
5 every means at its disposal (Ex. 2735-A, T. 24303-4.)
6 Disregarding this advice of Japan, Germany attacked
7 Soviet Russia on 22 June 1941. Prince KONOYE felt that
8 by this German breach of faith the Tripartite Pact had
9 been deprived of most of its practical usefulness. The
10 desire that Japan, Germany, and Russia might remain
11 friendly had now been shattered. KONOYE even considered
12 the desirability of denouncing the Pact outright in view
13 of the - - - - - changes in the circumstances after its
14 conclusion. (Ex. 2735-A, T. 24305-6.) Such was the
15 effect that the German-Russian war exerted on the Tri-
16 partite Pact.

17 5) Having launched into a life-and-death
18 struggle with Russia, Germany wanted to mobilize Japan's
19 help in order to secure a speedy victory. Ribbentrop
20 appealed to MATSUOKA with a personal appeal, but
21 MATSUOKA of course refused it, as the proposal was in
22 contravention of the mutual understandings exchanged at
23 the time of the Tripartite Pact. (Ex. 3143, T. 27971.)
24 This urging to go to war against Russia was repeated by
25 the Germans very often thereafter, as seen from many

German documents tendered by the prosecution.

1 The defense admits that, but at the same time
2 it contends that these documents show nothing but one-
3 sided intention of Germany. Germany, after entering into
4 a do or die struggle with Soviet Russia, was particularly
5 anxious to get Japan to join the war, and Ribbentrop and
6 others used every means to move the Japanese Government
7 to that end, through OSHIMA or Ott. But these documents
8 clearly show that Japan always, politely but firmly,
9 refused the German request. It is pointed out that as
10 this request was repeated by Germany also after the out-
11 break of the Pacific War, the refusal of Japan had to be
12 couched in a very courteous and diplomatic language, as
13 could not be otherwise between the allies. (Ex. 3822-A,
14 T. 37961; Ex. 812, T. 8014.) However, there is no
15 contrary evidence to the fact that Japan continued to
16 refuse the German requests. Japan and Germany were
17 opposed on this issue. This is clearly expressed by
18 Ribbentrop when he says:

20 *****"VIII. German-Russian War.

21 "After the Russian War broke out, I tried to
22 get Japan against Soviet Russia. I told OSHIMA that it
23 would be most useful if Japan would go against Soviet
24 Russia. Judging from the attitude of OSHIMA and the
25 Japanese Government, I got the impression that Japan did

1 everything possible to keep out of the conflict with
2 Soviet Russia and to keep from antagonizing Soviet Russia
3 in any way."***** (Ex. 2762, T. 24742.)

4 6) The third issue between Japan and Germany
5 was the question of the United States. One of the main
6 objects of the Tripartite Pact was to keep the United
7 States out of the war. Japan's earnest desire was to
8 improve the relations with the United States after im-
9 proving her political position by the conclusion of the
10 Tripartite Pact. MATSUOKA tried every means to find a
11 clue for this purpose immediately after the signing of
12 the Pact, as testified to by witness SAITO. (Ex. 3143,
13 T. 27973-7.) He had talks with Steinhardt, American
14 Ambassador to Russia, during his stay in Moscow in April,
15 1941, and emphasized Japan's peaceful intentions under
16 the Tripartite Pact, and expressed his desire for trust
17 in him by President Roosevelt and the Secretary of State.
18 (Ex. 2757, T. 24717-21.) The Japanese Government took up
19 the preliminary negotiations with the United States in
20 April, 1941, in a sincere expectation of peace as also
21 indicated by the above attitude of MATSUOKA. Germany
22 appeared to be very much opposed to the negotiations from
23 the outset, fearing that the political effect of the Tri-
24 partite Pact might be weakened. (Ex. 2758, T. 24722-3.)
25 When the first Japanese reply was dispatched to the

1 United States without waiting for German opinion, Germany
2 was very angry and demanded a full participation in the
3 negotiations. (Ex. 2759, T. 24724-6.) Japan did not
4 concede, and after Admiral TOYODA had become Foreign
5 Minister, no communication was made to Germany as to the
6 progress of the negotiations, in spite of repeated
7 German requests. Ott reported on 30 August 1941 how he
8 was refused by TOYODA to have the text of the message of
9 KONOYE to President Roosevelt. (Ex. 2760, T. 24727-9.)
10 This attitude was also maintained by TOGO as Foreign
11 Minister. As a result of it, the German suspicion to-
12 wards Japan rapidly increased to such an extent that on
13 1 October 1941 OSHIMA reported to Tokyo that if this
14 state should continue there was no telling what steps
15 Germany may take without consulting Japan. (Ex. 2761-A,
16 T. 24732-35.) On the other hand, Foreign Minister
17 TOYODA denied in July, 1941, emphatically to Ambassador
18 Grew that there was a basis for the American suspicion
19 that the Japanese advance into Southern French Indo-China
20 was carried out by German pressure, and stated that Japan
21 was not such a state that would do anything because of
22 the pressure of Nazi Germany. (Ex. 2754, T. 24694; Ex.
23 2755, T. 24705.) Ambassador Grew wrote in his diary of
24 18 August 1941 how TOYODA asked him to keep the negoti-
25 ations strictly secret from Germans and Italians. (Ex.

1 2756, T. 24711.) It is clear from the above evidence
2 that there was no collaboration between Japan and
3 Germany at that time, and Japan's policy was evidently
4 directed towards a better understanding with the United
5 tes, always at the risk of an enstrangement with
6 Germany.

1 7) But Germany could not afford to lose
2 Japan from among her friends, especially after her
3 war plan in Russia had failed. Therefore, she quite
4 obviously made it her policy to try to incite Japan
5 to an active policy towards the United States and
6 Great Britain. The evidence offered by the prosecu-
7 tion as to the contacts between OKAMOTO, Ott and
8 Kretschmer (Ex. 601, Tr. 6638; Ex. 602, Tr. 6640),
9 and the conversations between OSHIMA and Ribbentrop,
10 (Ex. 603, Tr. 6644-50) in November 1941, is a proof
11 of such an attitude of Germany. OKAMOTO's contact
12 with Kretschmer and Ott was made only in carrying
13 out of his duty to collect information; this cannot
14 be taken as showing any agreement between the two
15 countries. Besides, there is no evidence to support
16 the prosecution's assertion that the unilateral
17 statement of Ribbentrop to OSHIMA on 28 November
18 1941 was the result of this unofficial contact
19 between OKAMOTO and Ott and Kretschmer.

20 8) The war between Japan and the United
21 States came as a complete surprise to Germany.
22 Ribbentrop testified on 30 March 1946 in Nuernberg
23 that Germany tried to move Japan to attack Singapore
24 and Soviet Russia (which Japan had refused), but
25 Japan's attack on the United States was for Germany

1 a complete surprise (Ex. 3524, Tr. 34351-54). He
2 repeated this statement in his affidavit for use in
3 this Tribunal (Ex. 2762, Tr. 24742). Schmidt stated
4 as a witness in Nuernberg that the report of Pearl
5 Harbor attack was at first believed to be false in
6 the German Foreign Office (Ex. 2763-A, Tr. 24750).
7 Kretschmer testified that on the eve of the Pearl
8 Harbor attack he, together with the attaches of other
9 countries, was invited to Kabuki and a dinner party
10 by the Japanese army (Tr. 24660). Ott stated that
11 the Japanese attack came as a complete surprise to
12 him and to the other members of his staff, and he was
13 officially informed hours after the occurrence
14 (Ex. 3146, Tr. 28021).

15 Moreover, it is a significant fact that the
16 German declaration of war against the United States
17 was made without referring to the Tripartite Pact,
18 as an independent action on the part of Germany, as
19 seen from the text of that declaration (Ex. 2764,
20 Tr. 24752-3). Ribbentrop said that Hitler considered
21 that a virtual state of war existed between the
22 United States and Germany since President Roosevelt's
23 Navy Day speech in which he ordered the United States
24 Navy to "shoot on sight." (Ex. 2762, Tr. 27742).

25 9) On the other hand, the Japanese decision

1 to go to war against the United States was made
2 altogether independently of Germany and Italy and
3 without expecting any assistance German might be
4 able to give to Japan. According to witness YAMAMOTO,
5 Kumaichi, Foreign Minister TOGO stated that in the
6 event of war with America, Japan could expect no
7 help from Germany, and at the Liaison Conference
8 the Army and Navy High Command were both in agreement
9 with Foreign Minister TOGO that no help or assistance
10 could be expected from Germany (Tr. 26121-2). Witness
11 TANAKA, Shinichi, testified that the Japanese Army
12 thought that it could not expect any strategical aid
13 from Germany, as Germany was absorbed in the European
14 war and her military power was never limitless. In
15 view of the fact that Germany was not a big naval
16 power and situated remotely from East Asia and the
17 Western Pacific (Ex. 3027, Tr. 26995), no assistance
18 was possible.

19 10) The Non-Separate Peace Treaty of
20 11 December 1941 (Ex. 51, Tr. 6668-70) and the Military
21 Agreement of 18 January 1942 (Ex. 49, Tr. 6681-6) were
22 both concluded after the three countries of Japan,
23 Germany and Italy had come into war as allies. They
24 were nothing but quite ordinary and natural decisions
25 to be agreed upon among the allies in a war. These

1 two agreements were singularly ineffective. Italy,
2 and then Germany, surrendered one by one to the Allies
3 in spite of the Non-Separate Peace Treaty. Cooperation
4 on the operational field between the three powers
5 during the war was nonexistent. General Marshall
6 wrote in his book that there was no evidence of close
7 strategic coordination between Germany and Japan, and
8 that it is believed that Japan acted unilaterally
9 and not in accordance with a united strategic plan
10 (Ex. 2765A, Tr. 24755). Admiral NOMURA, Naokuni,
11 testified that the basic idea of the Military Agreement
12 was that the best coordinated operational result might
13 be expected through independent activities of each
14 navy in its respective designated area; therefore each
15 navy conducted its operations entirely under its own
16 plans and abilities, and no special meetings were held
17 for the coordination of the operational activities of
18 the three nations. He further stated that in about
19 March or April 1942 the German and Italian navy made
20 repeated proposals to the effect that they were desirous
21 of seeing the Japanese navy intensify its activities in
22 the Indian Ocean including offensive action against
23 the American transportation activities, but the Japanese
24 navy declined (Ex. 3000, Tr. 26571-3). Both Admiral
25 Wenneker and General Kretschmer, German Naval and

1 Military Attache in Tokyo during the war, testified
2 that there was no collaboration between the Japanese
3 and German services. Wenneker stated that relative
4 to cooperation between Japan and Germany in regard
5 to submarine warfare the utter lack of cooperation
6 would be the better topic for discussion, and that
7 Germany lost two auxiliary cruisers, three submarines
8 and six steamers in Japanese waters during the war
9 mostly due to lack of cooperation (Ex. 2999, Tr.
10 26556-7). Kretschmer testified that the almost daily
11 explanations of the situation in the Far Asiatic
12 theater of war were confined to just what happened,
13 and the Japanese information about Soviet Russia was
14 always very sparse and often worthless; the same
15 reluctance as in Tokyo was manifested by German High
16 Command concerning the war in the European theater
17 (Ex. 2751, Tr. 24618-9). Indeed, Japan and Germany
18 were fighting separate wars. There is a very clear
19 contrast with the close collaboration which existed
20 on the allied side, its Joint High Command, Joint
21 Chief of Staff, Lend-Lease Agreement, and countless
22 allies.
23
24
25

11. The defense proved with abundant evidence that the Mixed Commissions created by the Tripartite Pact did not function. As to the Commission in Tokyo, Kretschmer testified that from December 1940 until the end of the war there were only two sessions jointly for General, Military and Economic Commissions, and they were only empty propagandistic performances; the intentions of these ineffective gestures were to be used as a camouflage. Nothing was done in Tokyo which could be called a cooperation between the German and Japanese High Commands (exh. 2751, tr. 24,616). As to the Commission in Berlin, Admiral NOMURA stated that although the Mixed Commission was hastily inaugurated after the outbreak of the Pacific War, it was not more than a perfunctory meeting and was held only two or three times in the earlier stage of the war, followed by no meeting at all, later on (exh. 3000, tr. 26,569). His testimony is corroborated by the affidavit of KOMATSU, Mitsuhiro (exh. 3505, tr. 33,961-2). The prosecution's assertion that important matters were discussed by an unofficial commission of OSHIMA and Ribbentrop is indeed a curious one, for it is usual in the diplomatic procedure that important matters are taken up between the Foreign Minister and the Ambassador, without need for any commission. Moreover, the evi-

1 dence which the prosecution calls a complete working
2 program for the economic commission in Berlin (ex. 598,
3 tr. 6630-4) is a document destined for purely internal-
4 German consumption, and no one on the Japanese side
5 had ever seen it.

6 Although there were countless additional
7 items of proof we will not at this time present them
8 in any detail, because they are included in the individual
9 summation.

10 At this time we proceed to analyze Count V
11 of the Indictment, which deals specifically with
12 Germany, Italy and Japan.

13
14 C O U N T 5

15 All the defendants together with divers other
16 persons, between the 1st of January, 1928, and the 2nd
17 September, 1945, participated as leaders, organizers,
18 instigators, or accomplices in the formulation or execu-
19 tion of a common plan or conspiracy, and are respon-
20 sible for all acts performed by themselves or by any
21 person in execution of such plan.

22 The object of such plan or conspiracy was
23 that Germany, Italy and Japan should secure the mili-
24 tary, naval, political and economic domination of the
25 whole world, each having special domination in its own

1 sphere, the sphere of Japan covering East Asia, the
2 Pacific and Indian Oceans and all countries and islands
3 therein or bordering thereon, and for that purpose
4 should mutually assist one another to wage declared
5 or undeclared war or wars of aggression, and war or
6 wars in violation of international law, treaties,
7 agreements and assurances, against any countries which
8 might oppose that purpose, and particularly against the
9 United States of America, the British Commonwealth of
10 Nations, the Republic of France, the Kingdom of the
11 Netherlands, the Republic of China, the Republic of
12 Portugal, the Kingdom of Thailand, the Commonwealth of
13 the Philippines, and the Union of Soviet Socialist
14 Republics.

15 The whole of the Particulars in Appendix A,
16 and of the Treaty Articles in Appendix B, and of the
17 Assurances in Appendix C, relate to this Count.

18
19 8. ANALYSIS OF COUNT 5

20 1. All of the defendants together with divers
21 other persons

22 It has been our contention from the beginning
23 of this trial that this Tribunal has no competence to
24 investigate charges against other persons (or nations)
25 than those before them. The Charter specifically and

in spirit limits the scope of this inquiry into the
1 activities of "FAR EASTERN WAR CRIMINALS" and it is
2 to be understood that no Tribunal may arbitrarily en-
3 large upon the jurisdiction granted to it by law.
4 Since the Count of the Indictment limits the scope of
5 the inquiry into the activities of the defendants, it
6 must be evident to anyone charged with the duty of
7 determining the issues that this provision must be
8 strictly and narrowly construed.

9 What is meant by that evasive and, as Mr.
10 Keenan would say, "weasel" term "divers other persons"?
11 For our purpose we must ask the Tribunal to confine
12 it to at least persons who come under the term "Far
13 Eastern War Criminals." Since the group must of necessity
14 be of the phantom type, with neither name nor title,
15 can we be expected to speculate on their identity?
16 As has been suggested many times during this trial,
17 if we confine our inquiry to the doings of these accused
18 in the dock, we shall have a big enough problem. It
19 was a mistake in the first place to allow anyone but
20 the defendants to be considered in this case.

21 Since the prosecution mentions Germany,
22 Italy and Japan in Count 5, we must ask the Tribunal to
23 consider what nations are not intended under the head-
24 ing "Defendants or other divers persons."
25

1 It is to be understood that this Tribunal
2 would not attempt to review the guilt or innocence
3 of the leaders of Germany or the justice or injustice
4 of the failure to try the Italian leaders. It would
5 be most difficult for this Tribunal to make any findings
6 of fact on the question "to what extent did the leaders
7 of the two nations of Europe named participate in the
8 decision of Japan to go to war?"

9 Of necessity we must confine this hearing to
10 the deeds of the "defendants" and to restrict our in-
11 vestigation to their relationship to each other.

12 THE PRESIDENT: We will recess for fifteen
13 minutes.

14 (Whereupon, at 1445, a recess
15 was taken until 1500, after which the pro-
16 ceedings were resumed as follows:)
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MARSHAL OF THE COURT: The International

1 Military Tribunal for the Far East is now resumed.

2 THE PRESIDENT: Mr. Cunningham.

3 MR. CUNNINGHAM: Page 70, No. 2:

4 Participated as leaders, organizers, insti-
5 gators or accomplices, etc.

6 In the preceding paragraph we suggested that
7 only the accused in the dock were contemplated by
8 Count V. That divers other persons could not be tried
9 here unless they were specifically named or designated.
10 We also point out that only individuals and not nations
11 were subject to the charge. The wording of the above
12 paragraph emphasizes these points and gives stress to
13 the further proposition that only individuals could be
14 leaders. The whole structure of the prosecution's case
15 is based upon individual responsibilities. However, in
16 this one count, of all of the fifty-five they claim
17 that the instrumentality or the means to carry out the
18 conspiracy is the state, not Japan alone but two other
19 states, over which they could never have had any con-
20 trol and with whom they were only carrying on normal
21 and strained diplomatic relations. It is inconceivable
22 that a group of nations could be presumptive enough
23 even to try the leaders of a defeated nation, but to
24 accuse three nations, as such; one of them a recent
25

1 ally or co-belligerent is giving too much scope to the
2 term "Far Eastern War Criminals."

3 Surely there is no contention that this group
4 of accused had any power or influence over the politi-
5 cal acts or aims of Germany or Italy.

6 3. The object of the plan or conspiracy was
7 that Germany, Italy and Japan should secure the mili-
8 tary, "aval, political and economic domination of the
9 whole world.

10 There is no suggestion in the Charter or else-
11 where in the Indictment as to the authority for such
12 a charge as set out here. Although the prosecution
13 has spent much time and space in their attempt to
14 justify the charge that "Aggressive war is a crime,"
15 they have totally neglected the subject "Is world
16 domination"an offense recognized under any law?

17 It is our understanding that the Charter
18 contemplates only four kinds of offenses. It reads,
19 "Planning, Preparation, Initiating or Waging of a
20 Declared or Undeclared War of Aggression, or in Viola-
21 tion of International Law, etc."

22 Since they recognize the offense of "Aggres-
23 sive war" as the object of the conspiracy and not
24 "domination of some area," we suggest that there is
25 no offense defined or named in the Charter which

corresponds to the charges made in Count V of the
Indictment.

Until specific authority can be pointed out under the Charter or under some convention, treaty or assurance that Domination of an area is considered unlawful, we must say that Count V does not embrace any offense under the Charter or under the general rules of international law.

4. Each having special domination in its own sphere.

It has never been considered criminal for a nation or group of nations to seek domination of the area in its own sphere. That is the principle of the Monroe Doctrine, the balance of power in Europe and spheres of influence as used in the most recent agreements.

The writers on this subject have described this activity of nations in various ways, for instance Pitt Corbett says at page 104 of his Vol. 1, 5th Edition, Section 56 as follows:

"Spheres of Influence.

(a) A sphere of influence, so far as it can be said to possess a definite meaning, indicates a region, generally inhabited by races of inferior civilization, over which a State seeks, by compact with some

1 other State or States that might otherwise compete with
2 it, to secure to itself an exclusive right of making
3 future acquisitions of territory (b), and, generally,
4 also, the direction and control of the native inhabi-
5 tants. Such compacts are intended to guard against
6 future conflicts that might otherwise arise; and
7 are usually the result of a bargain under which some
8 special areas of interest are allotted as between the
9 respective parties to the arrangement. Britain and
10 France, with respect to certain parts of Africa, by
11 declaration and agreements made in 1890, 1891, and
12 1898 (c). (2) As between Great Britain and Portugal,
13 with respect to certain parts of the African contin-
14 ent, by agreements made in 1890, 1893, and 1896 (d).
15 (3) As between Great Britain and Italy, with respect
16 to certain parts of East Africa, by protocols of 1891
17 and 1894 (e). (4) As between Great Britain and the
18 Congo Free State, with respect to certain parts of
19 East and Central Africa, by an agreement of 1894 (f).
20 But such arrangements confer no territorial rights and
21 impose no responsibility on the State in whose favor
22 they are created, in relation to non-contracting
23 Powers; and although considerations of comity or fear
24 may induce the latter to respect such arrangements,
25 yet this is a matter of policy, and not of law. Nor

1 can such compacts, even if acquiesced in by other
2 States, give rise to any prescriptive right (g).

3 "Spheres of Interest.

4 "Somewhat different as regards their objects
5 are those agreements which allocate certain areas
6 already occupied by States more or less civilized as
7 spheres of influence or interest between Powers, hav-
8 ing already interests adjacent thereto; although the
9 line between these and the former is somewhat diffi-
10 cult to draw. Such arrangements, again, are merely
11 political, and involve no legal consequences other
12 than those arising out of the compact."

13 5. The sphere of Japan covering East Asia
14 and Indian Oceans and all countries and Islands therein
15 or bordering thereon and for that purpose should mutu-
16 ally assist one another to wage declared or undeclared
17 war or wars of aggression ** against any countries
18 which might oppose that purpose, etc.

19 Here we must determine whether the offense is
20 in "assisting" another nation in compliance with a
21 treaty, or without a treaty. It has never been con-
22 sidered criminal for one nation to assist another
23 nation which has been attacked. The crime alleged or
24 described in the charter is the planning, preparation,
25 initiation or waging of a war in violation of inter-

1 national law, not assisting others. Mutual assistance
2 pacts are most common in international relations.

3 When the prosecution says that the three
4 nations proposed to make war against anyone who might
5 oppose them, such an allegation is neither sufficiently
6 specific nor sufficiently proved to be considered here.

7 The judgment of the International Military
8 Tribunal in Nuernberg states regarding conspiracy:
9 "The prosecution says, in effect, that any significant
10 participation in the affairs of the Nazi Party or
11 Government is evidence of a participation in a con-
12 spiracy that is in itself criminal. Conspiracy is
13 not defined in the Charter. But in the opinion of
14 the Tribunal the conspiracy must be clearly outlined
15 in its criminal purpose. It must not be too far re-
16 moved from the time of decision and of action. The
17 planning, to be criminal, must not rest merely on the
18 declaration of a party program such as are found in
19 the 25 points of the Nazi Party announced in 1920 or
20 the political affirmation expressed in 'Mein Kampf' in
21 later years. The Tribunal must examine whether a
22 concrete plan to wage war existed and determine the
23 participants in that concrete plan" (Transcript page
24 16,382). What is the extent of the "concrete plan to
25 wage war" for the purpose of this trial?

VI. Next we shall examine concretely the following acts of Japan charged as aggressions in the light of the conspiracy charge of Count 5:

1) Manchurian Incident:

This incident occurred prior to the emergence of the Nazi regime in Germany, and had nothing to do with Germany or Italy. No evidence was tendered by the prosecution to show the contrary.

2) China Incident:

The prosecution asserts that the Anti-Comintern Pact was a preparation for the China Incident, merely on the basis of the chronological order of events that the Pact was concluded in 1936 and the Incident broke out in 1937. No concrete evidence was tendered to prove any connection of the two. On the contrary, it was made clear that the Anti-Comintern Pact (and the Secret Agreement) was for the only purpose of defense against the menace of the Comintern and the Soviet Union, which supported the Comintern from behind with armed forces, and that the China Incident was not a result of planned actions, but an accumulation of reprisals. There could have been no conspiracy between Japan and Germany in view of the proved fact that Germany was opposed to the China

Incident from the outset, did not agree to the withdrawal of military advisors and continued to sell arms to China.³

3) Pacific War:

It was claimed that the Tripartite Pact was one of the causes of the failure of the Japanese-American negotiations. However, at least at the time of the conclusion of the Tripartite Pact, no agreement existed between Japan and Germany to wage a war against America and England. Overwhelming evidence shows that both Japan and Germany wanted to avoid war with the United States.⁴ The judgment of Nuernberg states: "The Tripartite Pact between Germany, Italy and Japan had been signed on 27 September 1940 and from that date until the attack upon the USSR the defendant Ribbentrop with other defendants was endeavoring to induce Japan to attack British possessions in the Far East. This, it was thought, would hasten England's defeat, and also keep the United States out of the war" (pp 16,843-4). The attitude of Germany to the Japanese-American negotiations is another negative proof of a conspiracy between Japan and Germany. No evidence was tendered that Japan and Germany conferred prior to the outbreak

2. Ex. 486A, T. 5980-1
 Ex. 598, T. 6601-1
 Ex. 549, T. 63246; Ex. 550, T. 6341-3;
 Ex. 2762, T. 24,740

of the Pacific War. Ribbentrop was completely surprised by the Japanese attack on Pearl Harbor.¹ No witness who participated in the discussions prior to the Pacific War testified that Japan's decision to go to war was made also in consideration of Germany. The record of conversation of OSHIMA and Ribbentrop on 28 November 1941,² which was also referred to in the Nuernberg judgment, is an intercepted telegram, and OSHIMA testified that he has considerable doubt as to its accuracy.³ At any rate, even if we do admit that Germany tried to involve Japan in a war with the United States, it is evident that no concrete plan to support the charge of conspiracy existed. No such evidence was tendered by the prosecution.

The prosecution seems to give much weight to the records of conversations of MATSUOKA with the German leaders in supporting the charge of conspiracy. Even if the conversations had been as recorded by the German side (the question of German documents will be discussed later), they were conducted by MATSUOKA on his own responsibility and according to his personal views. The contents were never communicated to anybody,⁴ and never adopted as Japan's policy. It is

1. Ex. 2762, T. 24,742; Ex. 3524, T. 34,353-4

2. Ex. 603A, T. 6644-50

3. Ex. 3508, T. 34,030-1 4. Ex. 3508, T. 34,025

1 difficult to determine what was the real intention of
2 MATSUOKA, or whether he considered these conversations
3 important, as the interrogation or memoranda of MATSU-
4 OKA were rejected as evidence by this Tribunal. Under
5 the circumstances we contend strongly that it is very
6 unfair to use the records of MATSUOKA's conversations
7 against any other accused. Besides, MATSUOKA resigned
8 as Foreign Minister in July 1941, and completely re-
9 tired from political life. He had nothing directly to
10 do with the Pacific War, and was rather opposed to the
11 people who decided the war.

12 The prosecution produced no witness in the
13 Japan-German phase. This might have been because
14 they thought that they had sufficient evidence in
15 German documents, but perhaps they could not find a
16 single Japanese witness favorable to them. Therefore,
17 we must carefully examine the probative value of the
18 German documents as tendered to this Tribunal, on
19 which alone the prosecution is basing their charges.
20

21 The German documents were of course compiled
22 by the Germans alone. No Japanese has ever seen them;
23 they did not even know of their existence. This was
24 made clear by the testimony of witness Stahmer¹ and
25 other evidence.² It is in fact contrary to the general
principle of criminal procedure to use the record of

1 a conversation between A and B, against B when such
2 a record was compiled by A without knowledge of B
3 (although it could be used against A, in this case
4 against the Germans in Nuernberg). In order to use it
5 against B, the signature of B or any other evidence
6 of confirmation by B is necessary. It is especially
7 so in order to prove an agreement by the parties,
8 a most important factor of conspiracy.³

9 The German records of conversations were not
10 based on shorthand transcript, and were compiled often
11 by participants or attendants at the conversation
12 often after a considerable time. In some cases it is
13 not clear even when the records were made. At any
14 rate, the conversation was never recorded word by
15 word, and there is no assurance that opinions or
16 judgments of the recorder were not included, or that
17 his memory did not fail. Therefore, there is a great
18 doubt as to the accuracy of these records. They cer-
19 tainly cannot be taken as evidence of an agreement
20 between the parties.
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- 24 1. Ex. 2744, T. 24,409-10
25 2. Ex. 2748, T. 24,586-7
3. T. 6184

There are several different categories of German documents, which will be discussed separately below:

(1) The first group of documents was recorded by an attendant of conversations, Dr. Schmidt. Affidavit of Schmidt is attached thereto. In view of the fact that cross-examination of Schmidt was not allowed, the defense has doubts as to their accuracy. But in view of the ability of Schmidt, these documents can be considered as comparatively accurate. This is, of course, limited to the documents accompanied by Schmidt's affidavit.

(2) Other documents are signed by persons who were not actually participants in the conversations. In this case it is not clear whether such a person was present at the conversation or he merely recorded what was dictated to him. Even if he was present at the conversation, the accuracy of his record must be considered as much inferior to that of the first group.

(3) The majority of documents was apparently written by the participants themselves or dictated. It is inevitable that any record taken by the participant of a conversation becomes mixed with his subjective interpretations. Great possibility exists that his wishful thinking is recorded as if it was an opinion

1 expressed by the other party. Especially in diplomatic
2 conversations it is more than customary that leading
3 questions are used. There is then the question of
4 language in case of Japanese. A "yes" spoken by the
5 Japanese means often only that he understood the
6 opinion of the other party, but it can easily be mis-
7 interpreted as if he agreed with that opinion. In
8 order to avoid such ambiguities, international agree-
9 ments always, even if they take the form of an "oral"
10 agreement, made in writing and must be confirmed by
11 both parties. A mere oral agreement is worthless in
12 the diplomatic world.

13 Besides, there was a special circumstance in
14 Germany to be considered. In Germany of dictatorship,
15 the position of an official was very unstable; his
16 promotion or future depended entirely upon the whim
17 of his superiors. If he was not agreeable to his
18 superior, he might even face the danger of dismissal.
19 This caused many unsound emulations among the officials,
20 seeking to please the superiors. They often acted
21 with the Nazi-like attitude "end justifies means."
22 This is briefly stated in OSHIMA's affidavit,¹ and
23 can also be seen from the affidavit of Ott.²
24

- 25
1. Ex. 3508, T. 33,982
2. Ex. 3503, T. 33,934.

1 (4) Other German documents are telegrams
2 exchanged between Tokyo and Berlin. Telegrams from
3 Berlin often convey the context of conversations, and
4 what was said under item 1-3 can be applied here.
5 Others are communications of the policy of the
6 German Government, but the nature of information
7 upon which the policy is based is often not clear.

8 Telegrams from Tokyo to Berlin are mostly
9 information telegrams dispatched by Ott. Ott himself
10 testified that they are not very accurate.^{3.} The
11 sources of information are not made clear, and so
12 many interpretations, imaginations and conclusions of
13 Ott and his subordinates are included that they are
14 really worthless as data for concrete facts. Generally
15 speaking, embassies and legations in foreign countries
16 usually send information to their home governments as
17 they collect it without paying much attention to its
18 accuracy. The requirement of speed would not permit
19 them to check the value of information. Therefore, we
20 contend that it is not proper to use such telegrams as
21 evidence against one who did not participate in their
22 drafting.
23

24 7. Lack of Agreement.

25 It goes without saying that an agreement

3. Ex. 3303, T. 33,927-37

1 between the parties is an essential factor of a con-
2 spiracy. From the prosecution's lengthy summation,
3 trying to prove the conspiracy between Japan and
4 Germany, we can only pick up, as showing agreements
5 between the two countries, the Anti-Comintern Pact,
6 the Tri-Partite Pact, the Cultural Agreement, the
7 Non-Separate Peace Treaty and the Military Agreement.
8 There are no other agreements of any importance between
9 the parties.

10 The prosecution seems to give great weight
11 to the decision of the Four Minister's Conference
12 preceding the Tri-Partite Pact¹ as proving conspiracy.
13 However, this decision, like other decisions of the
14 Imperial or Liaison Conferences or the Cabinets is a
15 purely internal Japanese decision, and does not
16 constitute an agreement with Germany. Therefore, it
17 cannot at any rate be connected with the conspiracy
18 charged in Count 5. The same can be said regarding any
19 German policy which was not communicated to Japan.
20

21 MATSUOKA's conversation in Berlin can in no
22 way constitute an international agreement. Even if
23 MATSUOKA might have agreed personally to something
24 with German leaders, such agreements were nothing but
25 secret, private agreements, as seen from the records
1. Ex. 541, T. 6307-21

1 of conversations. They cannot bind any other
2 Japanese or the Japanese Government.

3 The evidence tendered by the prosecution as
4 to some contacts between some Japanese and Germans
5 in November 1941² shows only that some Japanese
6 wanted to sound German attitude, or that some German
7 wanted to instigate Japan to an active policy. But
8 it is indeed a very remote assertion to contend that
9 they constituted international agreements to wage war
10 against western powers.

11 The prosecution thus failed, although they
12 tendered much in evidence directed toward the charge
13 of Count 5, to show any criminal agreements between
14 Japan and Germany which might have justified the
15 charge of conspiracy. Mere negotiations, conversa-
16 tions, soundings or encouragement by Germans can
17 certainly not be taken as agreements or conspiracy
18 between Japan and Germany. They also failed to prove
19 the criminality of any Japanese-German agreements,
20 except that they rely upon mere allegations.

21 The prosecution might contend in connection
22 with Count 5 that, apart from agreements between the
23 nations, Japanese individuals can be engaged in
24

25 1. Ex. 582, T. 6544-5

2. Ex. 601, T. 6638; Ex. 602, T. 6640; Ex. 603-A,
T. 6644-50.

1 criminal conspiracy with German individuals. But the
2 defense contends that in international politics an
3 individual without the backing or approval of his
4 government is powerless to make any agreement with
5 foreigners which might influence governmental policy.
6 Such an agreement, if any, can certainly be not con-
7 sidered as coming under Count 5. OSHILA is often cited
8 in German documents to have agreed with German views.
9 But we contend that the documents are totally worth-
10 less to prove any agreements, inasmuch as they were
11 not shown to and confirmed by OSHILA at any time.
12 Moreover, no concrete plan, which is essential to
13 conspiracy according to the Nuernberg judgment, has
14 ever been the subject of his alleged agreements.
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8. Lack of Continuity.

1 The prosecution further charges that Japan and
2 Germany continuously collaborated since the Anti-Comin-
3 tern Pact. This seems to be one of the essential points
4 of the prosecution. Admittedly, it is natural for any
5 country that its foreign policy maintains some continu-
6 ity, as it can never disregard actual circumstances. It
7 cannot change in a day or two. Such examples can be
8 found in the foreign policy of each and every great
9 power. It is correct from the retrospect that the tie
10 created by the Anti-Comintern Pact between Japan and
11 Germany influenced the Japanese foreign policy after-
12 wards. But the question is whether at the time of the
13 conclusion of the Anti-Comintern Pact the future of the
14 Japanese-German relations was foreseen and decided upon.
15 The answer to the question is a definite "no."

17 The Japanese-German relations were never, and
18 could have never been an independent factor in the
19 Japanese foreign policy they were always a part of it.
20 Therefore, unless all of the features of the Japanese
21 foreign policy are made clear, a true evaluation of the
22 Japanese policy towards Germany cannot be undertaken.
23 Diplomacy towards various countries is always inter-
24 woven with one another, and the policy of great powers
25 with which Japan had important relations, for instance

1 the United States, Great Britain, Russian, China, etc.,
 2 was constantly affecting and influencing Japan's policy
 3 towards Germany. These points could not be made clear
 4 in this trial.

5 The prosecution's description of the Japanese-
 6 German relations is, even if true, necessarily very much
 7 one-sided. It is in some respects very misleading, too,
 8 inasmuch as it exaggerates insignificant details out
 9 of all proportion to the whole picture. In this connec-
 10 tion, the following facts are pointed out:

11 1) The Anti-Comintern Pact was indeed a very
 12 weak tie connecting Japan and Germany. It was rather
 13 a spiritual and ideological combination against Communism.
 14 The door was not closed to collaboration with any other
 15 countries, which were invited to join the Pact.¹

16 2) In spite of the Anti-Comintern Pact, Germany²
 17 was opposed to the Japanese policy in the China Incident.

18 3) The negotiations for the strengthening of
 19 the Anti-Comintern Pact were ended by the conclusion of
 20 the German-Russian Non-Aggression Treaty. Japan protested
 21 vigorously, and the Anti-Comintern Pact was made a dead
 22 letter.³ The Cabinets of ABE and YONAI pursued a foreign
 23

24 (1. Ex. 36, T. 5934-6

25 2. Ex. 486A, T. 5980-1; Ex. 594, T. 6601;

Ex. 595, T. 6604-20

3. Ex. 486L, T. 6122-3; Ex. 2727, T. 24196)

policy friendly to the United States and Great Britain.

1 4) Germany never communicated to Japan her
2 intention to attack Poland. She was not bound to do so.

3 5) At the time of the conclusion of the Tri-
4 partite Pact, Germany declared that she would not re-
5 quest Japan's participation in the European War.¹

6 6) Germany was opposed to the Japanese-
7 Russian Neutrality Pact.² Japan was opposed to the
8 German-Russian War.³

9 7) Germany urged Japan to attack Singapore.
10 Japan refused.⁴

11 8) Germany urged Japan to attack Soviet
12 Russia. Japan refused.⁵

13 9) Germany wanted to keep the United States
14 out of the war. Japan attacked the United States with-
15 out any previous consultation with Germany.⁶

16 10) During the war there was no cooperation
17 between the two countries.⁷

18 ITALY

19 Although Count V mentions something about Italy
20 as a member of the Axis group her participation is
21

- 22 (1. Ex. 549, T. 6323-4
23 2. Ex. 2735-A, T. 24303; Ex. 580, T. 6528-9
24 3. Ex. 2735A, T. 24303-4
25 4. Ex. 570, T. 6457; Ex. 571, T. 6459-67
Ex. 572, T. 6468; Ex. 579, T. 6521
5. Ex. 812A, T. 8014; Ex. 3822A, T. 37961-3
6. Ex. 2762, T. 24742; Ex. 3524, T. 34353-4
7. Ex. 3765A, T. 24754-5)

1 considered as negative. Without presenting any evidence
2 on the subject we assume that the Tribunal is well aware
3 of the fact that Italy acted not in concert but in
4 contravention of the understanding which she had with
5 Germany, for defensive agreements. There never was any
6 agreement with Japan in which her assistance was sought
7 or expected. Italy all through the European war and
8 for months before was a most impotent ally. She was
9 a constant drain upon the war potential of Germany and
10 diplomatically she was not an asset, but always a
11 liability. Even the Allies admit this.

12 In lieu of evidence on this subject we rely
13 upon the statement of General Marshall, being one of
14 the highest and most reliable military authorities of
15 the times and a world statesman. His statement bears
16 repetition:

17 "When Italy entered the war Mussolini's
18 strategic aims contemplated the expansion of his empire
19 under the cloak of Germany military success. Field
20 Marshal Keitel reveals that Italy's declaration of war
21 was contrary to her agreement with Germany. Both Keitel
22 and Jodl agree that it was undesired. From the very
23 beginning Italy was a burden on the German war potential.
24 Dependent upon Germany and German-occupied territories
25 for oil and coal Italy was a constant source of economic

attrition. Mussolini's unilateral action in attack-
1 ing Greece and Egypt forced the Germans into the Balkan
2 and African campaigns, resulting in over-extension of
3 the German armies which subsequently became one of the
4 principal factors in Germany's defeat." (Exhibit 2765A,
5 p. 24754)
6

7 THE PRESIDENT: Is that in evidence? If it
8 isn't you shouldn't read it. You have an exhibit
9 quoted but it has an "A" after it. It may be in
10 evidence. You say "in lieu of evidence" you quote
General Marshall.

12 MR. CUNNINGHAM: Well, I must admit I am not
quite sure. As I was reading it I was reflecting. The
document is in evidence but I am not quite sure that
this statement is in evidence.

16 THE PRESIDENT: Oh, that wouldn't matter. If
17 it is in evidence it can be read. Proceed, Mr.
18 Cunningham.

19 These following facts are worthy of judicial
20 notice:

- 21 1. Italy refused to join the war against
22 Poland, but Russia did join Germany in this campaign.
23
- 24 2. Italy invaded Greece without the approval
25 and contrary to the wishes of Germany (Ex. 2765A,
p. 24,754).

1 3. Italy joined the war against France with-
2 out the consent or approval and contrary to the wishes
3 of Germany.

4 4. Italy, as a nation became the enemy of
5 Germany at a crucial time in the war.

6 5. Italy surrendered in early 1943, contrary
7 to her agreement with Germany.

8 GERMAN-RUSSIAN-JAPANESE RELATIONS.

9 The final argument of the prosecution con-
10 cerning the relations of Russia to Germany, Japan and
11 Italy did not come in sufficient time to be included
12 in the general summation on German-Japanese relations.
13 Only a brief answer will be undertaken here, as it
14 relates to Count V.

15 It is impossible to properly view the foreign
16 policy of Japan during the days between 1935 and 1941
17 without taking into consideration what was happening
18 to affect the foreign policy of the nations of Europe
19 and Asia. Russia had as much to do with the change in
20 policy of Japan towards Germany as did any other power.
21 It was the action of the Comintern in the first place
22 in 1935 which provoked the Anti-Comintern Pact. It
23 was Russian action in Asia and Europe which aroused
24 both Germany and Japan to negotiate for the development
25 (1. H. 1-168., Del'd February 11, 1948)

1 of closer relations.¹ It was Soviet Russia's apper-
2 ment of Hitler in 1939 and her abandonment of England
3 and France which enabled Hitler to conquer Western
4 Europe. The Tripartite Pact was concluded, contrary
5 to the allegation of the Russian prosecution, with the
6 improvement of relations with Soviet Russia as one of
7 the principal aims.²

8 In reading the arguments on the effect of the
9 Anti-Comintern Pact, the effect of the negotiations
10 for the strengthening of the Pact and the consideration
11 of the events leading up to the conclusion of the Tri-
12 partite Pact one might get the impression that Soviet
13 Russia was contending that these diplomatic moves
14 were made with a view to antagonizing Soviet Russia.³

15 After reading all of the documents introduced
16 in the German-Japanese, Russian-Japanese and German-
17 Russian phases of the case an impartial observer could
18 not help but get the impression that Japan was doing
19 all within her power to settle all of her differences
20 with Soviet Russia on a friendly and diplomatic basis.⁴
21 There is proof that she succeeded in her dealings with
22 Russia but failed with the other Western Powers.

23 (1. Ex. 3508, T. 33970

24 2. Stahmer, Ex. 2475, T. 24382

25 3. H. 125, H 104

4. Ex. 2762, T. 23146)

1 In digesting the documents which deal with
2 the German-Russian relations, the Non-Aggression Pact
3 and the Protocol which provided for consultations
4 between Germany and Russia, one would get the impres-
5 sion that Soviet Russia was doing all within her power¹
6 to appease and remain friendly with Nazi Germany.
7 History has told us emphatically that such a relation-
8 ship was impossible between the two powers with such
9 divergent views.²

10 Upon reading the Tripartite Pact anyone would
11 readily understand that both Japan and Germany were
12 desirous of maintaining their friendly relations with
13 Russia, which were cordial at the time between Germany
14 and Russia and later between Japan and Russia.³ It is
15 difficult to read the documents and attribute to them
16 the motives and results which their words or objects
17 do not express, and which are claimed by the prosecution.
18 We cannot review the evidence which established these
19 views but they are presented in other phases of the case,
20 both general and individual.

21 It has been admitted all through this trial
22 that Germany did everything within her power to get
23

24 (1. Ex. 2744, T. 24392

25 (2. Ex. 2475, T. 24382

(3. Ex. 43, T. 513. KONOYE explanation §. 24301)

1 Japan to join the war against Russia. This Japan re-
2 fused to do.¹

3 We understand, from the record, that the
4 German leaders did not consider Japan's attitude as
5 cooperative. The record is also clear that Japan did
6 not wish Germany to go to war against Soviet Union and
7 counselled her agsint it. Germany did not consider Japan
8 obligated in any way to assist her in the war against
9 Russia. There was no obligation on the part of Japan
10 to join. Japan had through her diplomatic relations
11 prevented Germany from creating a situation which would
12 bring Japan into conflict with the Soviet Union.² By
13 entering into the Neutrality Pact with Russia in 1941
14 Japan announced to the world that she wanted to remain
15 friends with Russia. It was quite apparent at that
16 time that friendly relations between Germany and Russia
17 could not be expected for long. This diplomatic move
18 by Japan negatives any plan of cooperation between
19 Germany and Japan vis-a-vis Soviet Russia. These are
20 the major topics discussed in the Russian Summation.
21 The details of the border incidents, the mediation
22 talks and the other political maneuvers which involved
23 Japan and Russia and Germany are covered elsewhere.
24

25 (1. Ex. 2462, T. 23146
2. Art. 5, Ex. 43.)

1 The Russian claims of Japanese aggression against her
2 cannot be taken too seriously. The relations of Russia
3 with Germany are not in issue here. The proof, the facts
4 and history contradicts the Russian story so completely
5 that this brief reference to their claims should be
6 limited to the weight which they attach to the state-
7 ments of Ott and Stehmer, and Pedersdorff. Let us
8 analyze for a moment the reference "the telegrams
9 of the well informed German ambassador in Tokyo, Ott"¹
10 and compare it to the facts.

11 With the exception of one witness the case of
12 the prosecution in this phase was based upon one-sided
13 self-serving documents produced from the German files,
14 expressing more a hope or prayer than the true state
15 of facts. Most of the documentary evidence originating
16 in Japan came from the German Ambassador Eugen Ott.
17 According to his own story the documents affecting the
18 accused in the dock were exaggerations, product of his
19 own imagination and not based upon facts, but manu-
20 factured to promote his own selfish interests further.
21 Proof was offered but refused, which was designed to
22 corroborate what Ambassador SHIRATORI states in his
23 testimony.² Before the Tribunal attempts to place any
24
25 (1. H-156. Page H-125.
2. DF. 3087, DL3086)

value on the documents of which Eugen Ott was the
1 author we invite their serious attention to this
2 statement, "Much of Ambassador Ott's information, such
3 as it was and false as it was, I am informed came from
4 the confidential secretary of Prince KONOYE, one OZAKI,
5 Hidemi who was later tried and executed. OZAKI was a
6 communist and associate of Sorge (Def. Doc. 2878,
7 Ex. 3595, record page 35053), a German by birth, but,
8 as I am further informed, a Russian spy who had worked
9 his way as a newspaperman into the confidence of
10 General Ott."

11 If the prosecution had wanted the facts they
12 should have produced Ott for cross-examination. While
13 Ambassador Ott was resting in Peking, China, the Chinese
14 Government reported:

15 "The Mission wishes to inform the Diplomatic
16 Section that the above-mentioned enclosures were sub-
17 mitted to the Ministry of Foreign Affairs as requested
18 and that the Mission has just received a reply from
19 the latter stating that the said Eugen Ott was sent
20 to Peiping by the GHQ in April 1946 and was brought
21 back to Tokyo from Shanghai in May 1946, not being
22 heard of in China since that time.

23 The said enclosures are herewith returned."

24 Ambassador Ott was questioned in Shanghai the
25 day before he was sent back to Germany.

The Tribunal is invited to discount the value
1 of the documents issued by Ott. We brand him as gullible
2 and since in the language of the President "that man
3 said a lot," it would be quite unjust to give it any
4 weight.

5 Since it is quite difficult to cross-examine
6 a document, we considered it in the best interests of
7 justice and the discovery of facts that Ott be here
8 for our cross-examination. Since it is rather difficult
9 to discredit one's own witness we were seriously handi-
10 capped in bringing the truth to the Tribunal. This was
11 the duty of the prosecution. They chose to offer only
12 the few distorted documents from a volume 6,000 which
13 alone could give the whole picture. From the standpoint
14 of the personal interest of Ambassador Ott in promoting
15 himself, from his uncertain position in the confidence
16 of his superiors, keeping in mind the source of his
17 information and the refusal of the Tribunal to entertain
18 the opinion of Ambassadors generally, especially Grew,
19 Craigie and NOMURA, KURUSU and others, it is incon-
20 ceivable that much importance will be placed upon the
21 utterings of an indiscreet impotent diplomat.
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CONCLUSION

1 1. It should be noted that the prosecution
2 has seen fit to infiltrate its argument on the German-
3 Japanese relations into each section of its summation
4 and throughout their whole case against the individual
5 accused. It would be an understatement to say that
6 there was repetition. It has been impossible for us
7 to read the whole of the some nineteen hundred pages
8 and answer each document and to properly interpret
9 the testimony of all of their witnesses as well as
10 our own. We must rely upon the Members of the Tribunal
11 to take both arguments by the four corners and overlook
12 the omissions.
13

14 2. If the Tribunal at some future time wishes
15 to review our claims as they relate to the German-
16 Japanese-Italian relations, this conclusion should
17 serve such a purpose. We have shown conclusively that
18 the scope of this inquiry has gone far beyond the author-
19 ity granted by the Charter.
20

21 Although we appreciate very much all of the
22 kind assistance given to us by the Tribunal and the
23 staff of SCAP, we assert that it was impossible to make
24 a full investigation of the facts which were brought
25 into issue under the wide sweeping charges made in
the Indictment, especially under Count V. (P.3)

1 As in the other phases of the defense case
2 we contend that the Potsdam agreement was extended
3 arbitrarily to embody offenses not included in the
4 term "War Crimes." (P.8)

5 3. The claim that the three nations of
6 Japan, Germany and Italy formed a conspiracy is prepos-
7 terous. (P.14) That the three nations conducted their
8 relations through the ordinary channels of diplomacy is
9 clearly shown and the manner in which the sovereign
10 rights of nations are exercised is not a matter of
11 judicial review, but a political question beyond the
12 competency of courts of any land. (P.15)

13 4. The Anti-Comintern Pact and the protocol
14 were weak, defensive agreements clearly within the
15 sovereign right of the nations to negotiate and exe-
16 cute, without interference or censure from other nations.
17 (PP. 16-17-18)

18 That the meaning of the pact is clear from
19 its context, not ambiguous and subject to the ordinary
20 rule of law as to the interpretation of international
21 treaties. (P. 19)

22 The treaty relationships between Japan and
23 Germany were approved in the usual parliamentary man-
24 ner, authorized by the constitution and approved by
25 the Privy Council. They were diplomatic agreements

of a political nature, not reviewable by any tribunal then in existence or authorized to be created. (PP.25-29)

4. Germany approached Japan for closer relations in 1938-1939 after the Anti-Comintern Pact had been extended to other nations. The negotiations failed due to the difference of opinion of the two governments on the "War participation" clauses. The negotiations were considered by seventy cabinet meetings, which negatives any idea of totalitarian decision or dictator rule in Japan. What Japan and Germany failed to agree upon in two years, Ribbentrop and Stalin agreed upon in a few hours, August 23, 1939. (PP. 29-31)

5. When Germany and Russia entered into their Non-Aggression Pact^{2.} in August 23, 1939, this caused great shock in Japan, destroyed the Anti-Comintern Pact, violated the secret protocol and reopened Japanese-American relations, changed the government in Japan and permitted Hitler to have a free rein to overrun Europe. Ambassador OSHIMA resigned because he had failed in his mission to keep his country informed on the relations of Germany to Russia. Japanese-German

(2. If aggressive war is a crime, why do nations enter into non-aggression pacts, don't they believe it either? It isn't necessary to make a contract not to break a law. The very term non-aggression pact negatives the existence of a law against aggression.)

1 relations remained cool for a year. ARITA considers
2 closer ties with Germany. YONAI Cabinet fell under
3 American pressure (PP. 34-40)

4 6. When the second KONOYE Cabinet was organ-
5 ized and MATSUOKA became Foreign Minister, feelers were
6 sent to Germany through Ambassador KURUSU who suc-
7 ceeded Ambassador OSHIMA in Berlin. As a result Envoy
8 Stahmer was dispatched to Tokyo to determine the true
9 situation. The picture was confused. In the meantime
10 the Four Ministers' Conference was held and a program
11 adopted upon which the negotiations for the Tripartite
12 Pact were concluded. Within twenty days an agreement
13 was reached and the Tripartite Pact became the Japan-
14 ese policy upon the issuance of the Imperial Rescript.
15 The same kind of a document which announced the new
16 constitution of Japan. This bound all of the people of
17 Japan and was published to the world. The negotiations
18 were kept secret. Only MATSUOKA participated from the
19 Japanese side. Stahmer and Ott from the German side.
20 The objects of the pact were clearly expressed in Eng-
21 lish, and its terms are clear, concise, and brief. The
22 power to enter into the agreement rested with the three
23 nations concerned. The world could readily understand
24 the purpose of the pact -- to keep the United States
25 out of the war in Europe -- to help Japan and Russia

1 maintain friendly relations with each other and with
2 Germany. The pact lost its effect when Germany went
3 to war against Russia and when Japan and America en-
4 tered the Pacific War. (PP. 40-48)

5 7. After the Tripartite Pact was concluded
6 the first test came when the Singapore question arose.
7 Japan refused diplomatically to enter the war against
8 Britain. Ribbentrop used all of the cunning, pressure
9 and propaganda at his disposal to induce Japan to
10 enter the war against Britain at the darkest hour of
11 the war. Japan refused. At the outbreak of the German-
12 Russian war, and for many months thereafter, the Ger-
13 mans used every diplomatic trick they knew to involve
14 Japan in their war with Russia, but Japan made a neu-
15 trality pact which she stuck to. Japan went to war
16 with America and Britain, much to the surprise of the
17 Germans. This was an independent action, as was the
18 action which Germany took against Russia. The non-
19 separate pact was a diplomatic measure which proved to
20 be ineffective. The mixed commissions were propagandis-
21 tic but not helpful. (PP. 48-65)

22 8. In our Analysis of Count V we have empha-
23 sized that this inquiry should be restricted to the
24 acts of individuals as prescribed by the Charter and not
25 to nations as mentioned in Count V. It is quite

1 inconceivable that the framers of the Charter intended
2 to make "World Domination" or division of the world
3 into spheres of influence, a crime or offense against
4 humanity. The conspiracy and the substantive offenses
5 are set out in the Charter and should be the guide
6 for the maximum interpretation of acts which come within
7 the classification of "Crimes against Peace." Although
8 no evidence has been introduced in this trial which
9 portrays the part which Italy played, we have shown
10 that she was so impotent and unreliable that the Court
11 should take notice of her status as an ally of the
12 Allies and not as a member of the Axis. (PP. 67-82)

13 9. Germany's relation to Russia was found to
14 be irrelevant in this trial. It is impossible to re-
15 view the relations of Japan and Germany to each other
16 without investigating the diplomatic relation between
17 Russia and Germany. We assume that the Tribunal by
18 this decision has determined that this inquiry does not
19 extend to Japan's relations to the European nations
20 but only to those nations named in the list of com-
21 plaining nations, and then only as respects their Far
22 Eastern possessions.
23

24 Japan devoted her foreign policy in great
25 part to appeasement of Soviet Russia and succeeded
until the last days of the war when she was attacked,

1 contrary to the Neutrality Pact. Soviet Russia tried
2 to appease Nazi Germany, but the two opposite systems
3 of government could not do business with each other for
4 long. The evidence upon which Russia relies to show
5 Japan's attitude toward Soviet Russia is not worthy of
6 credit, especially the documents of Ott and the testi-
7 mony of Prisoner-of-War von Petersdorff. The Tribunal
8 is invited to discount the value of their statements
9 and take the voluntary, unbiased and authoritative
10 statement of Ambassador Stahmer who spoke from first-
11 hand information. (PP. 82 A-h)

12 10. Although the issues of fact are relative-
13 ly simple in this phase of the case, the issues of law
14 involved are complex. If this Tribunal follows estab-
15 lished principles of law that "ambassadors are not
16 responsible for the ordinary consequences of their acts,
17 performed in a foreign country" and that acts of state,
18 either through their ministers of state and agents
19 abroad are not subject to judicial review, then the
20 legal issues will be simple of solution. Sovereignty
21 is the keyword in international relations. Political
22 decisions are of the sovereign -- are not reviewable
23 by the judiciary.

24 12. In the argument on the issues raised by
25 Count V we assert that the right to make treaties of

alliance is an inalienable right of a sovereign nation.

1 That violations of treaties are not crimes for which
2 individuals are responsible to third powers. We sug-
3 gest further that there is no connection under the
4 Charter between Far Eastern War Criminals and European
5 Axis War Criminals. We call attention of the Tribunal
6 to the fact that the prosecution is asking a judgment
7 on diplomatic correspondence. Unless all of the docu-
8 ments are available and offered, no true picture can be
9 determined. This Tribunal would not be justified in
10 returning a judgment based upon the facts it has before
11 it on the issues raised in Count V. The history of
12 Japanese policy during the period of the Indictment
13 shows seventeen foreign ministers. This should dispel
14 any illusion of continuity of foreign policy. (PP.90-111)

16 Going down now to --

17 THE PRESIDENT: Leave that until morning,
18 Mr. Cunningham.

19 We will recess until half past nine tomorrow
20 morning.

21 (Whereupon, at 1600, an adjournment
22 was taken until Wednesday, 10 March 1948, at
23 0930.)
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